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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 66

JEREMIAH REEVES, JR., PETITIONER,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED NOVEMBER 17, 1956

CERTIORARI GRANTED JANUARY 14, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

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[fol. 1] [Caption omitted]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

INDICTMENT—Filed November 14, 1952

THE STATE OF ALABAMA,
Montgomery County:

Circuit Court of Montgomery County November Term A. D. 1952 of this indictment, JEREMIAH REEVES, JUNIOR, whose name is to the Grand Jury otherwise unknown, forcibly ravished Mrs. Ann Crowder, a woman, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor Fifteenth Judicial Circuit of Alabama.

No Prosecutor—A True Bill—Homer Spiva, Foreman of Grand Jury.

Presented in open Court by the Foreman of the Grand Jury in the presence of 14 other members of the Grand Jury, this 14th day of November A. D. 1952.

John R. Matthews, Clerk of the Circuit Court of Montgomery County.

[File endorsement omitted.]

[fol. 2] IN CIRCUIT COURT OF MONTGOMERY COUNTY

Present The Honorable Eugene W. Carter, Judge Presiding

[Title omitted]

ARRAIGNMENT AND PLEA OF NOT GUILTY—November 15th, 1952

This day came the State by its Solicitor, and came also the defendant in his own proper person and by attorney; and the defendant's motion to continue the arraignment until a later day being argued by counsel and undgrstood by the Court, and being considered by the Court, it is con-

sidered and ordered by the Court, and it is the judgment of the Court, that the said motion to continue the arraignment of the defendant be and the same is hereby denied.

Thereupon the said defendant being duly arraigned upon the indictment pleaded thereto not guilty, and not guilty by reason of insanity; and on motion of the Solicitor for the State, it is considered and ordered by the Court that the 26th day of November, 1952, be and the same is hereby appointed as the day for the trial of this cause.

It is further ordered by the Court that the Sheriff of Montgomery County summon eighty persons including those heretofore drawn on the regular venire for the week in which this cause is set for trial; the Court proceeds to draw from the jury box in open Court and in the presence of the defendant the number of names, to-wit: thirty person with the regular jurors heretofore drawn for the week in which this cause is set for trial, to-wit: fifty, making the eighty jurors named in this order.

It is further considered by the Court that a list of the names of all jurors drawn for the week in which this cause is set for trial and those that are here specially drawn together with a copy of the indictment be forthwith served upon the defendant by the Sheriff of this County.

[fol. 3] In Circuit Court of Montgomery County

Present: The Honorable Eugene W. Carter, Judge presiding.

[Title omitted]

Drawing of Jury—May 16th, 1955

This the 16th day of May, 1955, came William F. Thetford, Solicitor who prosecutes for the State of Alabama, and came also the defendant in his own proper person and by attorney; and it appears to the Court that on a former day of this Court November 15th, 1952 the said defendant was duly arraigned and charged upon the indictment and pleaded thereto not guilty and not guilty by reason of insanity.

And on motion of the Solicitor for the State, it is considered and ordered by the Court that the 30th day of May, 1955, be and the same is hereby appointed as the day for the trial of this cause.

It is further order- by the Court that a list of all jurors Montgomery County summon one hundred persons including those heretofore drawn on the regular venire for the week in which this cause is set for trial; the Court proceeds to draw from the jury box in open Court and in the presence of the defendant the number of names, to-wit: fifty persons with the regular jurors heretofore drawn for the week in which this cause is set for trial, to-wit: fifty, making the one hundred jurors named in this order.

It is further order by the Court that a list of all jurors drawn for the week in which this cause is set for trial and those that are here specially drawn, together with a copy of the indictment be forthwith served upon the defendant by the sheriff of this county.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

APPOINTMENT OF SPECIAL JUDGE—May 30th, 1955

[fol. 4] Whereas, upon the calling of this case for trial the Honorable Eugene W. Carter and the Honorable Walter B. Jones, the two Circuit Judges for Montgomery County, each excused himself from the trial of this case by reason of the fact that each has been subpoenaed as a witness in said case, and

Whereas, the Solicitor, who prosecutes for the State of Alabama, and the Defendant and his attorneys, have been unable to agree upon some disinterested person practicing in this Court and learned in the law to act as a special judge to sit as a court and to lead, decide and render judgment in the same manner and to the same effect as such disqualified judge would have rendered but for such disqualification.

Now, therefore, I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, do hereby, under the pro-

visions of Section 124 of Title 13 of the 1940 Code of Alabama, appoint the Honorable James J. Carter, a disinterested person practicing in this Court and learned in the law to act as a Special Judge to sit as a Court and to hear, decide and render judgment in the same manner and to the same effect as a regular circuit judge of the Circuit Court of Montgomery County.

Done this the 30th day of May, 1955.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

OATH OF OFFICE

THE STATE OF ALABAMA,
Montgomery County, Circuit Court:

I, James J. Carter, as Special Judge Circuit Court Montgomery County, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I remain a citizen thereof; and that I will honestly and faithfully discharge the duties of the office which I am about to enter, to the best of my ability, so help me God.

James J. Carter.

[fol. 5] Subscribed and sworn to before me, this the 30th day of May, 1955.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION BY DEFENDANT FOR PERMISSION TO WITHDRAW PLEAS
—Filed May 30, 1955

Comes now the defendant, Jeremiah Reeves, Jr., by his attorneys, Peter A. Hall and Orzell Billingsley, Jr., and moves this Honorable Court for permission to withdraw the pleas of "Not Guilty and "Not Guilty by reason of insanity", heretofore entered on behalf of defendant in this

cause, and for reason therefor set out and assign the following:

1. The said pleas were entered in this cause on behalf of the defendant by his attorneys then representing him, on to-wit; the 14th day of November, 1952, on the day of his arraignment. Since said date the defendant has employed Peter A. Hall and Orzell Billingsley, Jr. to defend him and said attorneys, after giving some study to the case, have concluded that certain questions going to the legality of the defendant's indictment should be considered and ruled upon by this Honorable Court, before hearing the cause on its merits.

2. Defendant's said attorneys have prepared motions questioning the legality of defendant's indictment which it is requested that this Honorable Court will hear and rule upon before going into the merits of this cause.

Wherefore, premises considered, the defendant, Jeremiah Reeves, Jr., by his attorneys, respectfully moves this Honorable Court for permission to withdraw the pleas of "Not Guilty" and "Not Guilty by reason of insanity" which were previously entered in his behalf in the cause.

Respectfully submitted this 30th day of May, 1955.

[fol. 6] (S.) Peter A. Hall, (S.) Orzell Billingsley, Jr., Attorneys for the Defendant.

[File endorsement omitted.]

In the Circuit Court of Montgomery County, Alabama

Motion Docket, Circuit Court Fifteenth Judicial Circuit

[Title omitted]

Motion to Quash Indictment—Filed May 30, 1955

Now, comes the defendant, Jeremiah Reeves, Jr., and respectfully moves this Honorable Court to quash the indictment returned in this cause, and to hold the same for naught; and in support of said Motion alleges the following, to-wit:

1. For that defendant is a member of the Negro race and a citizen of the State of Alabama, and of the United

States of America, and was at the time the Grand Jury of Montgomery County, Alabama returned the indictment in this cause on to-wit, the 14th day of November, 1952, and for many years prior thereto, and at the present time, Negroes were, and are, systematically excluded from Grand Juries organized in said County and State, solely because of their race or color; or are discriminated against in the organization of Grand Juries in said County of said State solely because of their race or color in that no member of said race, or a mere token number, are included on the jury roll or have their names placed in the jury box; or if such names are placed on the jury roll or in the jury box, they are not drawn for service on any Grand Jury; or if they are drawn, they are not listed, thereby denying to the defendant due process, and equal protection of the laws guaranteed him by the Constitution and Laws of the State of Alabama, and the Fourteenth Amendment to the Consti- [fol. 7] tution of the United States of America.

2. Defendant avers that no Negro served on the Grand Jury which returned the aforesaid indictment against him in this cause, nor has any Negro served on a Montgomery County, Alabama Grand Jury in modern times; or if any Negroes have served on any of said Grand Juries, such service has only constituted a mere token number of eligible Negro male citizens.

3. Defendant avers the existence of a system, or practice, or custom, in the drawing or organization of Grand Juries to serve in Montgomery County, Alabama, designed to totally exclude Negroes from service on such Grand Juries, or to discriminate against Negroes solely on account of their race or color, contrary to the Constitution and Laws of the State of Alabama, and the Fourteenth Amendment to the United States Constitution.

4. Defendant avers that at the time the Grand Jury returned the indictment in this cause, according to the 17th Decennial Census of the United States, its Territories and Possessions for 1950, published by the United States Department of Commerce, Bureau of Census, of which the Courts of Alabama take judicial notice, the White male population of Montgomery County, twenty-one (21) years and over, numbers 25,021, and that the Negro male population of said County in said age group numbers 15,123; and

defendant avers that the great majority of the aforesaid Negro males are native born citizens of Montgomery County, Alabama, householders and freeholders in said County and State, generally reputed to be honest and intelligent men, esteemed in the community for their integrity and good character and that they are not habitual drunkards nor afflicted with such disease or physical weakness as would disqualify them to discharge the duties of grand jurors, and that they otherwise possess all of the qualifications set out in the Constitution and Laws of the State of Alabama and the United States which govern the selection and service of Grand Jurors, yet the jury commission failed or refused to place on the jury roll, and in the jury box the names of such Negro male citizens of Montgomery County, Alabama, and that at the time of said indictment and at the present time, the jury roll of said County con-
[fol. 8] tains less than five (5) per cent of the names of the total number of Negro males eligible, under the Constitution and Laws of the State of Alabama, and of the United States, for jury duty in said County. Defendant avers further that the method of selection of the names of Negroes to be placed on the jury roll and in the jury box of Montgomery County, Alabama, by the jury Commission, is highly irregular and arbitrary and contrary to the method prescribed by the Constitution and Laws of the State of Alabama, and of the United States, thereby depriving the defendant of rights guaranteed him by the Constitution and Laws of the said State of Alabama, and by the Constitution of the United States of America, especially the Fourteenth Amendment to the Constitution of the United States of America, guaranteeing to defendant due process of laws and the equal protection of the laws, and said indictment is void.

5. Defendant avers that members of the Negro race are, solely because of their race or color, arbitrarily, intentionally, and systematically excluded in the selection of persons for Grand Jury duty, in that the great majority of those qualified for service in Montgomery County, Alabama, are not included on the jury roll, or if included on said roll, their names are left out of the jury box, or if put into the box and drawn, they are not listed for service, and that because of the aforesaid practices, no Negroes,

or only a mere token number have served on a Grand Jury in Montgomery County, Alabama since the days of Reconstruction, or certainly not in modern times, and defendant avers that the Grand Jury which returned the aforesaid indictment against him was organized according to and in keeping with the aforesaid practice, thereby depriving defendant of due process and equal protection of the laws, guaranteed him by the Constitution and Laws of the State of Alabama, and the Constitution of the United States of America.

Wherefore, the defendant prays that this Court will take notice of this his Motion to Quash the Indictment in the abovesaid cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said motion.

(S.) Jeremiah Reeves, Jr., Defendant.

[fol. 9] *Duly sworn to by Jeremiah Reeves, Jr.; jurat omitted in printing.*

CERTIFICATE OF SERVICE (omitted in printing)

[File endorsement omitted.]

[fol. 10] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Motion Docket, Circuit Court, Montgomery County

[Title omitted]

MOTION TO QUASH VENIRE—Filed May 30, 1955

To the Honorable Court:

Comes now the defendant, Jeremiah Reeves, Jr., by his attorneys, Peter A. Hall and Orzell Billingsley, Jr., and makes this his Motion to Quash the venire or array drawn

on to-wit the 16th day of May, 1955, and in support of said motion alleges the following:

1. The defendant is a member of the Negro race.

2. Members of the Negro race, otherwise qualified to serve have been systematically excluded from service on the aforesaid jury, or discriminated against in the organization of said jury, in that no member of the Negro race has been drawn for service thereon; that there is no probability of them actually trying or participating in the trial of this, or any other case.

3. Defendant avers the existence of a system or practice in the drawing or organization of juries to serve in Montgomery County, Alabama, deliberately designed to discriminate against members of the Negro race in order to prevent them from serving on juries by either excluding them from the venire altogether or by keeping the number included so small that they can be systematically and uniformly struck from the venire and prevented from serving in the trial of any case.

4. Defendant avers that the 17th Decennial Census of the population of the United States, its Territories and Possessions for the year 1950, published by the United States Department of Commerce, Bureau of the Census, of which the Courts of Alabama take judicial notice states that the white male population of Montgomery County, Alabama, twenty-one (21) years and over, numbers 25,021, and that the Negro male population of said County in said age group numbers 15,123, and the defendant avers that notwithstanding the fact that the Negro male population over [fol. 11] the age of twenty-one years is in said ratio in proportion to the white male population, that since the year 1950, and before, and continuing to this date, there has been a uniform practice by the jury commission for Montgomery County, Alabama, of discriminating against prospective Negro jurors solely because of their race or color, either by leaving their names off the jury roll or by not including their names in the jury box from which the venire is drawn, so as to keep the number of Negroes actually summoned for jury duty at a token amount.

5. Defendant further avers that members of the Negro race are, solely because of their race and color, arbitrarily,

intentionally and systematically excluded from jury service or discriminated against in the selection of persons for jury duty in that the great majority of those qualified to serve in Montgomery County, Alabama, are not included on the jury rolls, or their names are left out of the jury box, or, if drawn are not listed for service so that only a mere token number can ever serve; and defendant avers that the venire drawn on to-wit: the 16th day of May, 1955, was selected in keeping with this practice and that unless this Honorable Court grants this his Motion to Quash the said venire, he will be deprived of his rights as guaranteed by the Constitution and Laws of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America. Wherefore, the defendant prays that this Court will take notice of this his Motion to Quash the Venire in this cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

Respectfully made this 30th day of May, 1955.

(S.) Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

Duly sworn to by Peter A. Hall and Orzell Billingsley, Jr.; jurat omitted in printing.

[fol. 12] Certificate of Service (omitted in printing)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Fifteenth Judicial Circuit of Alabama

[Title omitted]

MOTION FOR APPOINTMENT OF LUNACY COMMISSION—Filed May 30, 1955

Comes the defendant, Jeremiah Reeves, Jr. by his attorneys, Peter A. Hall and Orzell Billingsley, Jr., and moves the Court as follows:

That, Whereas, Jeremiah Reeves, Jr. was indicted by a convened Grand Jury of Montgomery County, Alabama, on to-wit: November 14, 1952; said indictment charging, to-wit: Jeremiah Reeves, Junior, whose name is to the Grand Jury otherwise unknown, forcibly ravished Mrs. Ann Crowder, a woman.

[fol. 13] Whereas, upon arraignment before this Honorable Court on to-wit, November 15, 1952, the defendant did enter pleas of not guilty and not guilty by reason of insanity, to the charges contained in said indictment; and

Whereas, due to the nature of the offenses charged in the aforesaid indictments, and due to the conduct of the defendant, both before and since his apprehension, there is reasonable ground for believing the defendant insane either at the time of the commission of the alleged offenses or presently;

Now, therefore, the premises considered, the defendant, by and through his attorneys, moves this Honorable Court, under and pursuant to, and in strict conformance with, the provisions of Title 15, Section 425 of the Code of Alabama of 1940, to appoint the Superintendent of the Alabama State Hospitals to examine the said defendant, and to make written report unto this Court, stating whether or not there is reasonable ground to believe the said defendant was insane either at the time of the commission of the offenses alleged in the aforesaid indictment, or presently;

And the defendant, through his attorneys, moves this Honorable Court that in the event the Superintendent of the Alabama State Hospitals shall make written report unto this Court, stating that there is reasonable ground

to believe that the said defendant was insane, either at the time of the commission of the offenses alleged in the aforesaid indictment, or presently, that this Honorable Court, pursuant to the provisions of the above mentioned Code Section, designate and appoint the Superintendent of the Alabama State Hospitals to place the said defendant under the observation and examination of himself and two members of his medical staff to be named by him; the said Superintendent and the said two members of his medical staff to constitute a commission of lunacy with the responsibility of determining the mental state of the said defendant and the existence of any mental disease or defect which would affect his present criminal responsibility at the time of the commission of the offenses alleged in the aforesaid indictments; and the aforesaid commission on lunacy be ordered to make written report to this Honorable Court after the [fol. 14] aforesaid inquisition of lunacy is completed.

And the defendant, by and through his attorneys, further moves this Honorable Court that the above-styled case which has been set and scheduled for trial on, to-wit, the 30th day of May, 1955, be continued and the trial of the defendant be postponed until such time as the aforesaid commission on lunacy shall have had the necessary time within which to complete the aforesaid examination of the defendant and to make written report as to the results of its examinations to this Honorable Court.

And the defendant, by and through his attorneys, moves this Honorable Court that the expenses attendant upon the examination of the defendant by the aforesaid commission on lunacy shall be borne in the same manner as provided by law in the case of persons adjudged to be of unsound mind following an inquisition in the Probate Court.

(S.) Peter A. Hall, (S.) Orzell Billingsley, Jr.

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION TO QUASH INDICTMENT

Now, comes the defendant, Jeremiah Reeves, Jr., in the above said action, and respectfully moves this Honorable Court to quash the indictment, heretofore returned against him in this cause, and hold the same for naught, and as grounds for said motion, sets out and assigns the following, separately and severally, to-wit:

1. For that the indictment returned against defendant by the Grand Jury for Montgomery County, Alabama, on to-wit, the 14th day of November, 1952, was based upon an [fol. 15] alleged confession of guilt which same was extorted and illegally obtained from defendant herein by and through force and violence or threats of force and violence, coercion, torture and brutality of officers and detectives of the City of Montgomery and of Montgomery County, Alabama, and the State of Alabama, while acting in their official capacities, and the defendant avers that he thereby was deprived of due process and equal protection of the laws guaranteed him by the Constitution and laws of the State of Alabama, and Fourteenth Amendment to the Constitution of the United States of America.

2. For that prior to the return of the aforesaid indictment in this cause, defendant was arrested without a warrant on to-wit: the 10th day of November, 1952, was never taken to a magistrate, was held in the County Jail of Montgomery County, Alabama, for a period of about five minutes, without formal charges against him, and without being permitted to confer with counsel, his parents, or friends, and was, subsequently taken to Kilby Prison, situated in the City of Montgomery, Alabama, where he remained for about ten days, where he was not allowed to confer with counsel, parents or friends until he had been indicted in this cause, and after defendant had been subjected to days of uninterrupted questioning by officers of the City of Montgomery, Alabama, and of Montgomery County, Alabama and subjected to violence or threats of violence, coercion and force, or threats of force; an alleged confession was extorted from him, which is the sole basis for the said indictment, and defendant avers that he was

thereby deprived of his rights to due process and to equal protection of the laws guaranteed him by the Constitution and Statutes of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.

3. For that the defendant was convicted by a verdict of a Montgomery County, Alabama Petit Jury empaneled, on the 28th day of November, 1952, to try him in said cause and was sentenced to death in the electric chair; that subsequent to said sentence an autonatic appeal was taken to the Supreme Court of the State of Alabama which conviction was affirmed by said Supreme Court of the State of Alabama, whereupon defendant, on constitutional grounds, appealed said conviction to the Supreme Court of the [fol. 16] United States of America, and the conviction of the Circuit Court of Montgomery County, Alabama, was reversed, without any directions to remand said cause for further trial (Jeremiah Reeves, Jr. vs. State of Alabama), for all of which the Circuit Court of Montgomery County, Alabama, can take judicial notice; and defendant further alleges that he is now being tried for the very same offense, without being re-indicted or re-arraigned and the said Circuit Court has not as of now returned a valid indictment against him and has refused to re-arraign him in said cause, thereby depriving defendant of his rights to due process and to equal protection of the laws guaranteed him by Constitution and Statutes of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.

Wherefore, the defendant prays that this Court will take notice of this his Motion to Quash Indictment in the above said cause, and declare the same void, and that Your Honor will, after consideration of the evidence and proof which the defendant offers to make grant said motion.

(S.) Jeremiah Reeves, Jr., Defendant.

Duly sworn to by Jeremiah Reeves, Jr., jurat omitted in printing.

[fol. 17] CERTIFICATE OF SERVICE (omitted in printing)

Take notice that the abovesaid Motion is set for an oral hearing before me on the 31 day of May, 1955, at o'clock.

——— ———, Judge for said Circuit Court.

In the Circuit Court of Montgomery County, Alabama

[Title omitted]

Motion to Set Aside Entire Jury Box—Filed May 31, 1955

Comes the defendant in the above cause and moves the court to set aside the entire Jury box on the following grounds:

1. The Jury Commission as presently composed is unconstitutional and illegal, and as such violates the constitution of the State of Alabama and that of the United States.

2. The method used by the Jury Commission in selecting jurors violates the fourteenth amendment to the Constitution of the United States and violates the Constitution of Alabama.

3. The jury box was illegally filled by a group of men set up as jury commissioners under an act of the legislature that is in violation of Section 105 of the Constitution of the State of Alabama which prohibits the passage of a local act in any case which is provided for by a general law.

4. The jury box is illegally filled by a group of men acting without legal and constitutional authority.

[fol. 18] 5. The jury commission of Montgomery as set up under a local act is illegal as said local act is unconstitutional and in violation of section 105 of the Constitution of the Sovereign State of Alabama.

Wherefore, the defendant prays that this Court will take notice of this his motion in this cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

Respectfully made this 31st day of May, 1955.

(S.) Peter A. Hall, (S) Orzell Billingsley, Jr., Attorneys for Defendant.

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION TO DECLARE VOID COMPOSITION OF JURY SWORN TO TRY DEFENDANT—Filed May 30, 1955

Comes the defendant in the above cause and moves the Court to declare void and illegal the composition of the present petit jury sworn to try the defendant, Jeremiah Reeves, Jr., in said cause, on the following grounds:

1. That there are no Negroes on said jury organized to try the defendant in this cause and that Negroes were excluded solely because of their race or color.

2. That qualified Negro citizens of Montgomery County, Alabama are systematically and arbitrarily excluded from service on the petit juries in said County and State solely because of their race and color.

[fol. 19] 3. That the exclusion of Negroes from the petit jury organized to try said defendant solely because of their color deprived this defendant of his rights to due process of laws and the equal protection of the law guaranteed him by the constitution and laws of the State of Alabama and the 14th amendment to the Constitution of the United States of America.

Wherefore, the defendant prays that this Court will take notice of this his motion in this cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

Respectfully made this 31st day of May, 1955.

(S.) Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

Filed in Open Court, May 30, 1955, James J. Carter, Special Judge.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION TO ALLOW PUBLIC TO REMAIN—Filed May 30, 1955

Comes the defendant in the above styled cause and moves the court to permit the public to remain during the trial of his case upon the following grounds:

1. Exclusion of the public is a violation of the Defendant's constitutional rights as guaranteed by the Constitution of The State of Alabama, and the 14th Amendment to the United States Constitution.

Wherefore, the defendant prays that this Court will take notice of this his Motion in this cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

[fol. 20] Respectfully made this 31st day of May, 1955.

(S.)Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

Filed in Open Court, This 30 May, 1955, James J. Carter, Special Judge.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION TO EXCLUDE PUBLIC WHILE PROSECUTRIX TESTIFIES—Filed May 30, 1955

Comes the Defendant in the above styled cause and moves the court to exclude the public and so inform the public that they are excluded only while the prosecut-ixs testify upon the following grounds:

1. Permanent exclusion of the public from all phases of the Defendants trial is a violation of the Defendant's constitutional rights as guaranteed by the Constitution of the State of Alabama, and the 14th Amendment to the Constitution of the United States.

Wherefore, the defendant prays that this Court will take notice of this his Motion in this cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

Respectfully made this 31st day of May, 1955.

(S.)Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

Filed in Open Court, May 30, 1955, James J. Carter, Special Judge.

[fol. 21] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

JUDGMENT ON PLEADINGS—May 30th, 1955

This day came William F. Thetford, Solicitor who prosecutes for the State, and came also the defendant in his own proper person and by attorney; and before announcing himself ready for trial the defendant files a motion for permission to withdraw his plea of not guilty and not guilty by reason of insanity heretofore made on arraignment of said cause; and said motion being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court that the said motion of the defendant to withdraw his plea of not guilty and not guilty by reason of insanity is without merit and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

Thereupon the defendant files his motion to quash the indictment, and the State orally demurrered to said motion to quash; and said demurrer of the State being argued by counsel, and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court that the demurrer of the State to the defendant's motion to quash the indictment be and the same is hereby sus ained and such motion to quash is denied, and to this ruling of the Court the defendant excepts thereto.

[fol. 22] IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

ADDITIONAL JUDGMENT ON PLEADINGS—May 31st, 1955

This day came William F. Thetford, Solicitor who prosecutes for the State of Alabama, and came also the defendant in his own proper person and by attorney; and the defendant's motion to quash the venire of regular and special jurors drawn for the trial of this cause upon which motion the State joined issue, and the taking of said testimony on said motion to quash having begun on May 30th, 1955 and continuing until this day; and after hearing all of said evidence, the Court is of opinion that the said motion to quash the venire of regular and special jurors drawn for the trial of this cause should be denied. It is,

Therefore considered, ordered and adjudged by the Court that the said motion to quash the venire of regular and special jurors drawn for the trial of this cause be and the same is hereby denied. And to this ruling of the Court the defendant excepts thereto.

Thereupon the defendant's motion to have a lunacy commission appointed to examine the defendant, being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

Thereupon the defendant filed an additional motion to quash the indictment in this cause, and said motion being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court that the said motion to quash the indictment be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon the defendant files its motion to set aside the entire jury box, and said motion being argued by counsel, and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court, that said motion to set aside

[fol. 23] the entire jury box be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon the defendant files his motion to declare void and illegal the jury drawn and empanelled for the trial of this cause, and said motion being argued by counsel, and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to declare void and illegal the jury empaneled for the trial of this cause be and the same is hereby overruled, and to this ruling of the Court the defendant excepts thereto.

Thereupon the defendant files his motion to permit the public to remain in the Court Room during the trial of said cause, and said motion being argued by counsel and understood by the Court, and being considered by the Court, the court is of the opinion that it should exercise its discretion to exclude from the Court Room all persons except the press, the family of defendant and those necessary in the conduct of the trial; it is therefore considered and ordered by the Court, and it is the judgment of the Court that the said motion be and the same is hereby denied, and the defendant excepts thereto.

Thereupon the defendant files a motion to exclude the public from the Court Room only while the principal witness for the State testifies, and said motion being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court, and it is the judgment of the Court that the said motion be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

[fol. 24] In Circuit Court of Montgomery County

[Title omitted]

Jury and Verdict—June 2nd, 1955

This the 2nd day of June, 1955, came William F. Thetford, Solicitor who prosecutes for the State of Alabama, and came also the defendant in his own proper person and

by attorney; and it appears to the Court that on a former day of this Court, November 15th, 1952, the said defendant was duly arraigned and charged upon the indictment and for his plea thereto said he was not guilty and not guilty by reason of insanity; and it further appearing to the Court that the said defendant has been duly served with a copy of the indictment, together with a list of the names of all of the jurors, both regular and special, drawn for the trial of this cause in strict accordance with a former order of this Court heretofore made and entered in this cause on the 16th day of May, 1955, and the trial of this cause having been set for May 30th, 1955, and on the 30th day of May, 1955, the said defendant in open Court announcing himself ready for trial on his said plea of not guilty and not guilty by reason of insanity, and the trial of this cause having begun on May 30th and continuing until this day, thereupon came a jury of good and lawful men, to-wit, Charles E. Ingalls, Sr., and eleven others, who having been duly drawn, selected, empanelled and sworn according to law, upon their oaths do say: "We, the Jury, find the defendant guilty as charged and fix his punishment at death."

Whereupon the defendant's counsel orally moved the Court to set aside the verdict of the jury; and the court being of opinion that no sufficient grounds are shown to sustain said motion; it is considered and ordered by the Court, and it is the judgment of the Court the said motion be and the same is hereby denied. And the defendant excepts thereto.

[fol. 25] It is therefore considered and adjudged by the Court that the said defendant is guilty as charged in the indictment, and the said defendant was remanded to jail to await the sentence of the law.

[fol. 26] In Circuit Court of Montgomery County

[Title omitted]

Sentence of the Court—June 3rd, 1955

And now upon this 3rd day of June, 1955, the defendant being now in open Court, and it appearing to the Court that the said defendant was duly convicted of said offense on a

former day of this term of Court and said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him says nothing.

It is therefore considered and ordered by the Court, and it is the judgment and sentence of the Court, that the Sheriff of Montgomery County, Alabama, shall remove the said defendant Jeremiah Reeves, Junior forthwith to Kilby Prison at Montgomery, Alabama, where he, the said Jeremiah Reeves, Junior shall remain in custody until the 12th day of August, 1955, and on said day in strict accordance with the law the Warden of Kilby Prison at Montgomery, Alabama, shall put the said Jeremiah Reeves, Junior to death by causing to pass through the body of said Jeremiah Reeves, Junior a current of electricity of sufficient intensity to cause the death of said Jeremiah Reeves, Junior, and that the application and continuance of such current of electricity to pass through the body of said Jeremiah Reeves, Junior until he, the said Jeremiah Reeves, Junior is dead.

And it is further ordered by the Court that the Clerk of this Court shall issue the necessary warrant for the execution of the said Jeremiah Reeves, Junior as required by law.

Any questions of law arising in this case for the decision of the Supreme Court of Alabama the defendant gives notice of appeal and on motion of the defendant, it is considered, ordered and adjudged by the Court that the sentence in this cause be and is hereby suspended pending the defendant's appeal to said Supreme Court of Alabama.

[fol. 27] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION FOR A NEW TRIAL—Filed June 28, 1955

Now comes the defendant, Jeremiah Reeves, Jr., and moves this Honorable Court to set aside the verdict and judgment rendered against said defendant on to-wit the second day of June 1955, and that this Honorable Court

will grant the said defendant a new trial, and as grounds for said Motion, sets out and assigns the following:

1. That the verdict returned by the jury in the said case is contrary to the law.

2. That the verdict returned by the jury is contrary to the facts.

3. For that the judgment of the court is contrary to the law in the case.

4. In that the verdict of the jury is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the court is not sustained by the great preponderance of the evidence in the case.

6. In that the verdict of the jury is based on bias, prejudice and passion against the defendant.

7. For that the court erred in over-ruling objections by the defendant to the introduction of evidence offered on behalf of the State of Alabama.

8. For that the court erred in over-ruling objections by the defendant to the introduction of evidence offered on behalf of the State of Alabama, which so biased and prejudiced the jury that the defendant was denied the right of a fair and impartial trial.

9. For that the court erred in denying defendant's Motion to declare void and illegal the petit jury drawn to try defendant in this cause, in that there were no Negroes serving on said petit jury.

10. For that the Court erred in denying defendant's Motion to withdraw pleas of not guilty and not guilty by reason of insanity entered in this cause on the occasion of [fol. 28] defendant's arraignment on to-wit November 15, 1952, in order that he might file a Motion to quash the indictment returned in this cause on to-wit the 14th day of November, 1952, on the grounds that no Negroes served on the Grand Jury which returned said indictment, and that Negroes were at that time, and are now arbitrarily and systematically excluded from service on Montgomery County Grand Juries solely because of their race or color thereby depriving defendant of his rights to due process and equal protection of the law guaranteed him by the laws and Constitution of the State of Alabama, and the 14th

Amendment to the Constitution of the United States of America.

11. For that the Court erred in denying defendant's Motion for a lunacy hearing under and pursuant to, and in strict conformance with, the provision of Title 15, Section 425, of the 1940 Code of Alabama.

12. For that the Court erred in excluding the public from the hearing of this cause thereby denying defendant due process and equal protection of the laws guaranteed him by the Constitution and laws of the State of Alabama, and the 14th Amendment to the Constitution of the United States of America.

13. For that the Court erred in denying defendant's Motion to exclude the public only while the prosecutrix was testifying.

14. For that the Court erred in allowing the State to read to the jury from, and introduce into evidence, a photostatic copy of what purported to be a transcription of the record a testimony of Dr. George Harold Kojac and Dr. Virgil R. Zarling over defendant's stren-ous objections.

15. That the Court erred in denying defendant's Motion to Quash Indictment returned against defendant in this cause, in that no Negro served on the grand jury which returned aforesaid indictment against defendant in this cause.

16. For that the Court erred in denying defendant's Motion to Quash Venire and Motion to Quash Indictment returned against the defendant on the grounds that Negroes qualified for jury service in Montgomery County, Alabama, are arbitrarily, systematically and intentionally excluded from jury duty.

[fol. 29] 17. For that the Court erred in over-ruling Defendant's several objections throughout the hearing of this cause, to which ruling the defendant reserved proper exceptions.

(S.) Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

Certificate of Service (omitted in printing)

Take notice that the abovesaid Motion is set for an oral hearing before me on the 18th day of July, 1955, at 10 o'clock, A. M. this 28th day of June, 1955.

(S.) James J. Carter, Special Circuit Judge.

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

DECREE—July 18, 1955

Jeremiah Reeves, Jr., having filed a motion for a new trial within the time prescribed by law for filing of such motions, and this being the day heretofore appointed for the hearing of said motion, said motion was presented to the Court and the Court proceeded to hear said motion and each ground thereof.

On hearing the motion, the Court has had the benefit of argument by counsel representing the said Jeremiah Reeves, Junior, and argument by the Solicitor representing the State of Alabama. The said motion being submitted, and the same being considered and understood by [fol. 30] the Court, it is

Considered, Ordered and Adjudged by the Court, that said motion is without merit, and that the same should be, and it is hereby, denied.

Done, this 18th day of July, 1955.

(S.) James J. Carter, Special Judge.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

ORDER AS TO APPOINTMENT OF COUNSEL—July 18, 1955

It being made known to the Court that Jeremiah Reeves, Junior, is represented by able counsel of his own choosing, and counsel having advised the Court that there is no

necessity that counsel be appointed to represent him on the appeal and that it is not the desire of counsel to be appointed to represent him on appeal, the Court finds no necessity or reason for the appointment of counsel to represent him on appeal, and it is so ordered.

Done this 18th day of July, 1955.

(S.) James J. Carter, Special Judge.

[File endorsement omitted.]

[fol. 31] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALABAMA

[Title omitted]

PETITION AND ORDER OF COURT THAT THE DEFENDANT BE GRANTED PERMISSION TO FILE STATEMENT THAT HE IS AN INDIGENT APPELLANT—Filed June 30, 1955

To the Honorable James J. Carter, Judge of the Circuit Court of Montgomery County Alabama

Comes your petitioner, Jeremiah Reeves, Jr. and shows unto the Circuit Court as follows:

That petitioner was convicted of the Crime of Rape, and his punishment fixed at death by the verdict of a jury entered on to-wit: the 2nd day June, 1955, in the Circuit Court of Montgomery County, Alabama, at which trial the Honorable James J. Carter presided; that an automatic appeal has been entered for petitioner, as provided by law, and that said appeal is now pending.

Wherefore, your petitioner prays that Your Honor as trial Judge presiding at petitioner's trial, grant him permission to file with the Clerk of the Circuit Court of Montgomery County, Alabama, a statement verified by his oath that he is an indigent appellant, as provided by law.

This 29th day of June, 1955.

(S.) Jeremiah Reeves, Jr., Petitioner.

The above petition having been considered by the Court, it is ordered that Jeremiah Reeves, Jr., the petitioner, who

was convicted of Rape, and his punishment fixed at death by a jury on the 2nd day of June, 1955, in the Circuit Court of Montgomery County, Alabama, be permitted to file a statement verified by his oath that he is an indigent appellant as defined by Title 15, Section 382 (1) *et* seq., Code of Alabama of 1940, *or* amended.

This 30 day of June, 1955.

(S.) James J. Carter, Special Judge presiding at trial of Jeremiah Reeves, Jr.

[fol. 32] *Duly sworn to by Jeremiah Reeves, Jr., jurat omitted in printing.*

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 33] [File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

ORDER OF COURT DIRECTING TRANSCRIPTION OF TESTIMONY—July 6, 1955

[Title omitted]

Jeremiah Reeves, Junior, having been convicted of rape and having been sentenced to death, the court entered an order of appeal in accordance with the statute providing for Automatic Appeal from Death Sentence, Title 15, § 382 (1), et seq., Code of Alabama.

On application of said Jeremiah Reeves, Junior, presented by his attorney of Record, Orzell Billingsley, Jr., the undersigned as trial judge granted permission in writing for the said Jeremiah Reeves, Junior, to file with the clerk a statement verified by his oath that he is an indigent appellant as defined in the statute; and said verified statement having been timely filed to the effect that he is without funds and has no reasonable way of procuring the same to pay the court reporter his lawful fees for transcribing the testimony

and other proceedings had at the trial of said cause; and said statement under oath filed by the said Jeremiah Reeves, [fol. 34] Junior, and his attorney of record, has been duly certified to the undersigned trial judge, and upon consideration thereof, the undersigned trial judge is reasonably satisfied that said statement is substantially true.

It is therefore Ordered that the Court Reporter transcribe the testimony and all other proceedings had at the trial of said cause.

No request being made for the appointment of legal counsel to prepare and prosecute the appeal of said Jeremiah Reeves, Junior, and the said Jeremiah Reeves, Junior, being represented by legal counsel of record in the trial court and on appeal, no necessity or cause now arises for the appointment by the Court of legal counsel to represent the said Jeremiah Reeves, Junior, on the appeal.

Done and entered this 6th day of July, 1955.

(S.) James J. Carter, Special Circuit Judge, The Trial Judge.

IN CIRCUIT COURT OF MONTGOMERY COUNTY

ORDER OF COURT OVERRULING MOTION TO SET ASIDE VERDICT AND SENTENCE—July 18, 1955

This day came the State by William F. Thetford, the Solicitor, and came also the defendant in his own proper person and by attorneys to the witnesses' motion to set aside the verdict of the jury and the sentence of the Court entered thereon, and the grounds for a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered, ordered and adjudged by the Court, and it is the judgment of the Court that the said motion be, and the same is hereby denied. And to this ruling of the Court the defendant in open Court excepts thereto.

[fol. 35] In Circuit Court of Montgomery County

Given Charges Requested by Defendant

The following written charges were requested by the defendant and given by the Court in writing, namely:

Requested Charge No. 1 for Defendant.

The Court charges the Jury that the defendant enters into the trial with a presumption of innocence, and this is a fact in the case which must be considered with all the evidence, and should not be disregarded.

Given,

James J. Carter, Special Judge.

Requested Charge No. 2 for Defendant.

I charge you, Gentlemen of the Jury, that you should acquit the defendant if you believe that a person other than the accused was guilty of the crime charged, or if you have a reasonable doubt as to such fact.

Given,

James J. Carter, Special Judge.

Requested Charge No. 3 for Defendant.

I charge you, Gentlemen of the Jury, that the accused in this case is presumed to be innocent until proven guilty beyond a reasonable doubt, and if after considering the evidence there is reasonable doubt of his guilt, then you can not find him guilty.

Given,

James J. Carter, Special Judge.

Requested Charge No. 4 for Defendant.

I charge you, Gentlemen of the Jury, that if from the evidence in this case you are satisfied beyond a reasonable doubt that the accused, even though he may have been able to distinguish right from wrong, was so afflicted with a diseased mind that by reason of his duress of such mental disease, he was moved by an irresistible impulse to commit the act charged, then you must find him not guilty by reason of insanity.

Given,

James J. Carter, Special Judge.

[fol. 36] Requested Charge No. 5 for Defendant

The Court charges the Jury that good character itself is part of the evidence in this case, and if the Jury upon a consideration of all the evidence have a reasonable doubt growing out of any part of the evidence, the Jury will give the defendant the benefit of such doubt and acquit him.

Given,

James J. Carter, Special Judge.

Requested Charge No 6 for Defendant

I charge you, Gentlemen of the Jury, that a reasonable doubt may be defined as a doubt which leaves the minds of the jurors wavering, unsettled, and unable to come to a conclusion as to the truth, or to a conclusion satisfactory to them, and if after hearing the evidence in this case there is such a doubt in your minds, you can not find the defendant guilty.

Given,

James J. Carter, Special Judge.

Requested Charge No. 7 for Defendant

I charge you, Gentlemen of the Jury, that reasonable doubt exists where a juror hesitates between two conclusions, and then, after considering the evidence from all angles, is reluctant to conclude which of two conclusions is correct.

Given,

James J. Carter, Special Judge.

Requested Charge No. 8 for Defendant

I charge you, Gentlemen of the Jury, that you can not find the accused guilty unless you believe him guilty beyond a reasonable doubt. A mere suspicion that he may be guilty is not enough to justify conviction.

Given,

James J. Carter, Special Judge.

Requested Charge No. 10 for Defendant

I charge you, Gentlemen of the Jury, if upon considering all of the evidence in this case, you have a reasonable doubt

of the defendant's guilt arising out of any part of the evi-
[fol. 37]' dence, it is your duty to find him not guilty.

Given,

James J. Carter, Special Judge.

Requested Charge No. 12 for Defendant

The Court charges the jury that the burden is on the state to convince you of the defendant's guilt to the exclusion of every reasonable doubt, and by evidence that overcomes the presumption of fact, that the law surrounds the defendant with, that he is innocent of crime.

Given,

James J. Carter, Special Judge.

Requested Charge No. 13 for Defendant

I charge you, Gentlemen of the Jury, that if from the evidence in this case you are satisfied beyond a reasonable doubt that the defendant was afflicted with a diseased mind to the extent that (1) he did not know right from wrong as applied to the particular act in question, or (2) if he did have such knowledge, he, nevertheless, by reason of the duress of such mental disease had so far lost the power to select the right and to avoid the act in question as his free agency was at the time destroyed, and (3) that, at the same time the crime was so connected with such mental disease in relation of cause and effect, as to have been the product of it solely, then you must find the defendant not guilty by reason of insanity.

Given.

James J. Carter, Special Judge.

Requested Charge No. 14 for Defendant

The Court charges the Jury that if the evidence, or any part thereof, after consideration of the whole of such evidence, generates a well founded doubt of defendant's guilt, the Jury must acquit him.

Given,

James J. Carter, Special Judge.

Requested Charge No. 15 for Defendant

The Court charges the Jury that they must find the defendant not guilty if the conduct of the defendant upon a reasonable hypothesis is consistent with his innocence.
[fol. 38] Given,

James J. Carter, Special Judge.

Requested Charge No. 16 for Defendant

The Court charges the Jury that the only foundation for a verdict of guilty in this case is that the entire jury shall believe from the evidence beyond a reasonable doubt and to a moral certainty, that the defendant is guilty as charged in the indictment, to the exclusion of every probability of his innocence, and every reasonable doubt of his guilt, and if the prosecution has failed to furnish such measure of proof, and to so impress the minds of the Jury of his guilt, they should him not guilty.

Given,

James J. Carter, Special Judge.

Requested Charge No. 17 for Defendant

The Court charges the Jury that before they can convict the defendant the evidence must be so strong as to convince each juror of his guilt beyond a reasonable doubt; and if, after considering all of the evidence, a single juror has a reasonable doubt of the defendant's guilt, arising out of any part of the evidence, then they cannot convict him.

Given,

James J. Carter, Special Judge.

Requested Charge No. 18 for Defendant

I charge you, Gentlemen of the Jury, that the legal test of insanity in Alabama which will justify a verdict of not guilty by reason of insanity is that at the time of the commission of the offenses the accused was afflicted with a diseased mind to the extent that (1) he did not know right from wrong at the time of the particular act in question (2) if he did have such knowledge, he, nevertheless, by reason of the duress of such mental disease had so far lost the power to select the right and to avoid doing the act in question as his free agency was at the time destroyed, and (3) that,

at the same time, the crime was so connected with such mental disease and the relation of cause and effect as to have been the product of it solely.

[fol. 39] Given,

James J. Carter, Special Judge.

Requested Charge No. 19 for Defendant

I charge you, gentlemen of the jury, that a reasonable doubt as to the guilt of the accused will exist if, after the entire evidence has been compared and considered by you, you do not have an abiding conviction, or an abiding conviction to a moral certainty, of the truth of the charges against the accused, and if such reasonable doubt does exist, you can not find the accused guilty.

Given,

James J. Carter, Special Judge.

Requested Charge No. 20 for Defendant

The burden is upon the State and it is the duty of the State to show beyond a reasonable doubt and to the exclusion of every reasonable hypothesis, every circumstance necessary to show that defendant is guilty, and unless the State has done that in this case, it is your duty, gentlemen of the Jury, to render a verdict of not guilty.

Given,

James J. Carter, Special Judge.

Requested Charge No. 21 for Defendant

The Court charges the Jury that if the Jury would not be willing to act on the evidence in this case, as if it were in relation to matters of the most solemn importance to their own interest, they must acquit the defendant.

Given,

James J. Carter, Special Judge.

Requested Charge No. 22 for Defendant

The Court charges the Jury that under your oaths you are bound to consider the evidence as to the character of the defendant along with all the other evidence in this case, and the character evidence alone may, in your sound judgment, be sufficient to generate a reasonable doubt of the

defendant's guilt of either charge presented in the indictment in this case, and if such reasonable doubt has been generated by the evidence after considering it all, you should give the defendant the benefit of that doubt and [fol. 40] acquit the defendant.

Given,

James J. Carter, Special Judge.

Requested Charge No. 23 for Defendant

The Court charges the Jury that if, after considering all the evidence in this case you have a reasonable doubt of the guilt of the defendant of the charges presented in the indictment in this case, you should acquit the defendant.

Given,

James J. Carter, Special Judge.

Requested Charge No. 24 for Defendant

The Court charges the Jury that if in considering all of the evidence in this cause, that tending to show guilt together with that tending to show innocence, there should spring up in the minds of the Jury from any part of the evidence a probability of the innocence of the defendant, the Jury should acquit.

Given,

James J. Carter, Special Judge.

Requested Charge No. 25 for Defendant

The Court charges the Jury that unless each member of the Jury is convicted beyond a reasonable doubt from the evidence in the case of the guilt of the defendant, then you should not convict the defendant.

Given,

James J. Carter, Special Judge.

Requested Charge No. 26 for Defendant

The Court charges the Jury that the legal presumption of innocence is to be regarded by the Jury in every case as a matter of evidence to the benefit of which the accused is entitled, and as a matter of evidence, it accompanies the accused, unless and until the other evidence has convinced

the Jury beyond a reasonable doubt of the guilt of the accused.

Given,

James J. Carter, Special Judge.

[fols. 41-42] In Circuit Court of Montgomery County

Refused Charges Requested by Defendant

The following written charges were requested by defendant and refused by the Court in writing, namely:

Requested Charge No. 9 for Defendant

I charge you, Gentlemen of the Jury, that you must find the defendant not guilty.

Refused,

James J. Carter, Special Judge.

Requested Charge No. 11 for Defendant

I charge you, Gentlemen of the Jury, that if you believe the evidence in this case, you can not find the defendant guilty.

Refused,

James J. Carter, Special Judge.

[fol. 43] In the Circuit Court of Montgomery County, Alabama

[Title omitted]

Before Hon. Eugene W. Carter, Circuit Judge

Transcript of Proceedings—May 30, 1955

Present:

The Court. William F. Thetford Esq. Circuit Solicitor; Robert B. Stewart, Esq., Assistant Circuit Solicitor, and James Garrett, Esq., for the State of Alabama.

John R. Matthews, Clerk.

Peter A. Hall, Esq.; Orzell Billingsley, Jr., Esq.; Fred D. Gray, Esq., and Charles D. Langford, Esq., for defendant.

Jeremiah Reeves, Junior, defendant.

The Solicitor: I now call 3121, Jeremiah Reeves, Junior.

The Court: In this case your presiding judge has been summoned as a witness, so has Judge Walter B. Jones, the other judge of this Circuit, so in accordance with Section 124, Title 13, Code of Alabama, 1940, I will ask the defendant if he has agreed upon one of the practicing attorneys at this Bar to replace the Judge.

The Solicitor: The answer is we have not, and we are not able to.

The Court: Under the law, the Clerk of the Circuit Court will appoint one.

The Clerk: I appoint James J. Carter.

The Court: Tell Mr. Carter to come around, and I turn this case over to him, and I will try the cases on the other side.

[fol. 44] James J. Carter, an attorney at this Bar, has been appointed under Title 13, Section 124, of the Code of 1940, to act as Special Judge, and the Court recuses himself due to the fact he is a witness in the Jeremiah Reeves case.

Recess.

[fol. 45] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

Before Hon. James J. Carter, Special Judge

Transcript of Proceedings—May 30, 1955

PRESENT:

The Court: William F. Thetford, Esq., Circuit Solicitor; Robert B. Stewart, Esq., Assistant Circuit Solicitor, and James Garrett, Esq., for the State of Alabama.

John R. Matthews, Clerk.

Peter A. Hall, Esq.; Orzell Billingsley, Jr., Esq.; Fred D. Gray, Esq., and Charles D. Langford, Esq., for defendant.

Jeremiah Reeves, Junior, defendant.

The Solicitor: I have called case No. 5121, and I now ask the Clerk to call the State's witnesses.

(State's witnesses called by the Clerk.)

The Solicitor: Subject to ascertaining the whereabouts of Dr. Relieling, and finding out the whereabouts of Pierce, the State announces ready.

The Court: What says the defendant?

Lawyer Billingsley: Will you call the defendant's witnesses?

(Defendant's Witnesses called by the Clerk.)

The Solicitor: The State would like to have an attachment for Pierce.

The Court: All right. The Sheriff is directed to get [fol. 46] Pierce here. I direct the Sheriff to get all the witnesses here, and I want to see them personally when they come.

Are there any preliminary matters to be taken up before we strike the Jury?

Lawyer Billingsley: No, sir.

The Court: Are you ready to qualify the Jury?

Lawyer Billingsley: Yes, sir.

Lawyer Hall: If the Court please, the defendant requests the privilege of withdrawing pleas previously entered at the time they were entered in this cause, for the purpose of filing motions going to the legality of the indictment, and in support of that oral request the defendant files a written motion.

(Motion by Defendant for permission to withdraw Pleas marked "Defendant's Exhibit 1, 5-30-1955, WHL")

The Solicitor: The State wants to be heard on this if the Court please. I might say preliminarily in this case that the indictment was returned by the Grand Jury following the November Session, 1952, the defendant was arraigned shortly thereafter and plead not guilty, and not guilty.

by reason of insanity, which are the two pleas generally recognized as pleas in Alabama.

The Court: Was he represented by counsel?

The Solicitor: He was represented by John McGee at that time as counsel. Subsequent to that his case was called for trial and John McGee attempted to withdraw his plea of not guilty, and not guilty by reason of insanity, and attacked the validity of the indictment. That right was denied to him almost three years ago. He was at that time represented by very competent counsel, and he was represented when he was arraigned by very competent counsel. What they are asking here comes too late. The Code, in substance, is that after arraignment there can be no attack of an indictment. Title 15, Section 286—it says in substance that pleas setting up defects must be made before the plea in this case. The same question was raised at the previous trial.

Lawyer Hall: This case was tried previously in this Court and subsequently arrived at the United States Su- [fol. 47] preme Court on the fact that this defendant was denied the privilege of withdrawing his plea, and decided his constitutional rights——

The Court: I have read the opinion, and apparently it was a one sentence opinion, and there was nothing said about the legality of his indictment.

Lawyer Hall: I was in the Court at the time the Justices considered this case and they went very thoroughly into the matter. It is fundamental American law that defendants at all times have the right to prove or disprove he has been tried according to the laws of our land. A defendant under our law is presumed innocent until found guilty, and until this defendant is found guilty he has every right to every safeguard provided by our law. This defendant contends that there is certain things which were denied him by this Court which are guaranteed him by the Constitution of the State of Alabama and by the Fourteenth Amendment to the Constitution of the United States, namely, his saying that he was denied due process of law and equal protection of the law guaranteed him by both the State Constitution and the Fourteenth Amendment to the Federal Constitution.

The Court: You also have a motion to quash the present venire?

Lawyer Hall: Yes, sir.

The Court: Of course, when we reach that you will be entitled to offer and present any evidence you have in that connection.

Lawyer Hall: We also have a motion to quash the indictment.

The Court: At the present time the Court overrules the motion to withdraw the pleas, and to that ruling the defendant excepts, and the Court grants an exception.

Lawyer Hall: We would like the record to show the defendant objects to the denial of due process of law and equal protection of the law.

The Court: As previously stated, the motion is overruled, and the ruling still stands.

Lawyer Hall: We are going to take an exception to Your Honor's ruling, and you have given us an exception.

The Court: I have so stated.

[fol. 48] Defendant's Exhibit 1—Motion by Defendant for Permission to Withdraw Pleas—Omitted. Printed side page 5 ante.

[fol. 49] Lawyer Hall: We are going to offer a motion to quash the indictment on the ground that no negroes served on that Grand Jury, and on the further ground, Your Honor, the defendant, Jeremiah Reeves, Jr., respectfully moves this Honorable Court to quash the indictment returned in this cause, and to hold the same for naught, and in support of said motion alleges the following, to-wit:

1. For that defendant is a member of the negro race and a citizen of the State of Alabama, and of the United States of America, and was at the time the Grand Jury of Montgomery County, Alabama, returned the indictment in this cause, on to-wit, the 14th day of November, 1952, and for many years prior thereto, and at the present time, negroes were, and are, systematically excluded from Grand Juries organized in said county and state, solely because of their race or color; or are discriminated against in the organization of Grand Juries in said county of said state solely be-

cause of their race or color in that no member of said race, or a mere token number are included on the jury roll or have their names placed in the jury box; or if such names are placed on the jury roll or in the jury box, they are not drawn for service on any Grand Jury; or if they are drawn, they are not listed, thereby denying to the defendant due process, and equal protection of the laws guaranteed him by the Constitution and laws of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.

2. Defendant avers that no negro served on the Grand Jury which returned the aforesaid indictment against him in this cause, nor has any negro served on a Montgomery County, Alabama, Grand Jury in modern times; or if any negroes have served on any of said Grand Juries, such service has only constituted a mere token number of eligible negro male citizens.

3. Defendant avers the existence of a system, or practice, or custom, in the drawing or organization of Grand Juries to serve in Montgomery County, Alabama, designed to totally exclude negroes from service on such Grand Juries, or to discriminate against negroes solely on account of their race or color, contrary to the Constitution and laws of the State of Alabama, and the Fourteenth Amendment to the United States Constitution.

[fol. 50] 4. Defendant avers that at the time the Grand Jury returned the indictment in this cause, according to the seventeenth decennial census of the United States, it said territories or possessions for 1950, published by the United States Department of Commerce, Bureau of Census, of which the courts of Alabama take judicial notice, the white male population of Montgomery County, twenty-one years and over, numbers 25,021, and that the negro male population of said county in said age group numbers 15,123; and defendant avers that the great majority of the aforesaid negro males are native born citizens of Montgomery County, Alabama, householders or freeholders in said county and state, generally reputed to be honest and intelligent men, esteemed in the community for their integrity and good character, and that they are not habitual drunkards nor affected with such disease or physical weakness as would disqualify them to discharge the duties of Grand Jurors, and

that they otherwise possess all of the qualifications set out in the Constitution and laws of the State of Alabama and the United States which govern the selection and service of Grand Jurors, yet the Jury Commission failed or refused to place on the jury roll, or in the jury box, the names of such negro male citizens of Montgomery County, Alabama, and that at the time of said indictment and at the present time, the jury roll of said county contains less than five per cent of the names of the total number of negro males eligible, under the Constitution and laws of the State of Alabama, and of the United States, for jury duty in said county. The defendant avers further that the method of selection of the names of negroes to be placed on the jury roll and in the jury box of Montgomery County, Alabama, by the Jury Commission is highly irregular and arbitrary and contrary to the method prescribed by the constitution and laws of the State of Alabama, and of the United States, thereby depriving the defendant of rights guaranteed him by the Constitution and laws of the said State of Alabama, and by the Constitution of the United States of America, especially the Fourteenth Amendment to the Constitution of the United States of America, guaranteeing to defendant due process of laws and the equal protection of the laws, and said indictment is void.

5. The defendant avers that members of the negro race are, solely because of their race or color, arbitrarily, inten- [fol. 51] tionally, and systematically excluded in the selection of persons for Grand Jury duty, in that the great majority of those qualified for service in Montgomery County, Alabama, are not included on the jury roll, or if included on said roll, their names are left out of the jury box, or if put into the jury box and drawn, they are not listed for service, and that because of the aforesaid practices, no negroes, or only a mere token number, have served on a Grand Jury in Montgomery County, Alabama, since the days of reconstruction, or certainly not in modern times, and defendant avers that the grand jury which returned the aforesaid indictment against him was organized according to and in keeping with the aforesaid practice, thereby depriving defendant of due process and equal protection of the laws, guaranteed to him by the Constitution and laws of the State of Alabama, and the Constitution of the United States of America.

Wherefore, the defendant prays that this Court will take notice of this his motion to quash the indictment in the aforesaid cause, and that Your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said motion.

(Written motion to quash indictment marked "Defendant's Exhibit 2, 5-20-1955, WHL")

Lawyer Hall: We request the Court to set the motion down for hearing immediately.

The Court: Have you a similar motion on the venire?

Lawyer Hall: Yes, sir, we have, Your Honor.

The Solicitor: We would like to be heard on this motion.

The Court: You may proceed.

The Solicitor: To that motion the State, through the Circuit Solicitor, demurs to the motion and moves to strike the motion on the ground said motion was filed in this Court after a plea to the merits answered in this case and, therefore, under Title 15, Sections 278 and 279, comes too late and I would like to read these two sections to the Court in support of the demurrer and motion to strike.

Section 278, Title 15, of the 1940 Code of Alabama, reads as follows: "No objection to an indictment on any ground going to the formation of the Grand Jury which found the [fol. 52] same can be taken to the indictment, except by plea in abatement to the indictment." That is a portion of that Section.

I will read Section 279: "Any plea in abatement to an indictment must be filed at the first session at which the indictment was found, if the accused has been arrested, or if the accused has not been arrested, such plea in abatement must be filed at the first session at which it is practicable after the defendant has been arrested and in all occasions such plea in abatement must be filed before the plea to the merits."

Lawyer Hall: We ask the Court to distinguish between the motion we have just made to the Court and a plea in abatement. This is not a plea in abatement according to the statutes.

The Solicitor: The statute says the only way you can attack the indictment is by a plea in abatement.

Lawyer Hall: We would be glad to supply authorities. I think Your Honor will recognize it is purely discretionary with the Court, and at all times before we enter the trial of this cause the defendant—this is also discretionary with the Court—could withdraw pleas and then submitted de novo.

The Court: I have already exercised my discretion as far as withdrawing pleas is concerned. I am not inclined to change my ruling on that. Your motion to quash the venire is in substance the same as this?

Lawyer Hall: Yes, sir.

The Court: We will reserve the ruling until we hear evidence on the motion.

(Motion to quash venire marked "Defendant's Exhibit 3, 5-30-1955, WHL")

The Solicitor: I have already dictated a motion to strike.

Lawyer Hall: I would like to know the ground of that. I really don't know what it was.

The Solicitor: I stated the grounds specifically, that the motion you filed in the nature of a demurrer comes too late under our law, and I read two of those Sections in the Code to the Court.

The Court: The State's demurrer to the motion to quash [fols. 53-56] would be sustained, to which the defendant is granted an exception to the ruling of the Court.

The defendant also files and presents to the Court a motion to quash the venire which I believe, counsel will agree, contains the identical grounds of the previous motion. The Court will grant the defendant to offer any evidence he might see fit in this matter.

The Solicitor: The State has no objection.

The Court: In reading this, are you contending that any race is entitled to preferential rights upon Juries?

Lawyer Hall: No. We are contending all the reputable citizens of this county should be tallied up by the Jury Commission, should see service on the Grand Jury and in the jury box regardless of race. We don't contend there should be preferential representation, but we urge Your Honor there is such a small proportion of negroes on juries where you have such a large proportion of negroes, it is indicative of the fact they are discriminated against.

The Court: That they are discriminated against by reason of color and race, and they are systematically excluded from juries in this county?

Lawyer Hall: Yes, sir.

The Court: That is the issue to be determined and the Court will hear evidence on that.

Defendant's Exhibit 2—Motion to Quash Indictment Omitted. Printed side page 6 ante

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[fols. 57-58] Defendant's Exhibit 3—Motion To Quash Venire—Omitted: Printed side page 10 ante

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[fol. 59] Twelve-thirty o'clock P. M. Adjourned until two o'clock P. M.

Two o'clock P. M.

[fol. 60] Lawyer Hall: With the exception of the lawyers and other officers of the Court, we ask that all the other witnesses be put under the rule.

The Court: Let all witnesses who are to testify come around and be sworn.

The defendant has requested the rule to include everybody but members of the Bar. Go in these rooms or outside in the hall until you are called as a witness.

Testimony on Motion of the Defendant to Quash the Venire

The Solicitor: I would like the record to show that as to the motion which is presently being heard, the motion of the effect there is a systematic exclusion of members of the negro race from this particular jury, the State simply denies the allegations of the motion and joins issue on it.

Lawyer Hall: Did you make a ruling on the motion to quash?

The Court: The motion to quash the indictment?

Lawyer Hall: Yes, sir.

The Court: I overruled that motion.

Lawyer Hall: And it is understood that we took an exception?

The Court: Yes, that is right.

EUGENE W. CARTER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please, sir,

[fol. 61] A. Eugene Carter.

Q. Your occupation, please, sir?

A. Circuit Judge, Montgomery County.

Q. How long have you been Circuit Judge of Montgomery County?

A. Twenty-one years.

Q. During that period of time have you also been a member of the Jury Commission of Montgomery County?

A. Yes.

Q. Is that all of the twenty-one years?

A. The whole time.

Q. As such Jury Commissioner you are responsible for putting names on the Montgomery jury list?

A. As one of the Commissioners.

Q. How many commissioners are there?

A. Five, two Circuit Judges, the Judge of the Probate, Clerk and Sheriff.

Q. Is that pursuant to the general law of the State of Alabama?

A. Local law.

Q. And as one of the Jury Commissioners you are responsible as part of your duties to keep up a jury list in the jury box?

A. Yes.

Q. Do you have any assistants, or how do you keep up the list?

A. We have regular meetings from time to time; we have gone through the county in search of a list and obtain names from different people and different organizations. As a matter of fact, I had a list from a Union Association of Colored People.

Q. Have you also used the telephone directly?

A. We have done that, we have lately.

Q. You have?

A. Yes.

Q. Do you have any on the roll where you did *you* use the telephone directly?

A. That is right.

Q. Did you use the City Directory?

A. Same proposition.

Q. How about the voter's list?

A. Used that too. Most of that is done by the Clerk. He [fol. 62] gets the names for us and we pass on the names which he secures. The Jury Commission doesn't try to do that. We have a Clerk. That duty is up to him. When he has all those names submitted to us we have a meeting to pass on them, to put them on the list or reject them.

Q. This Clerk who is the Clerk of the Jury Commission, does he visit around through the county regularly?

A. Well, I don't know what you call regularly. You know we have Court here and we have to work most of the time. We try to get out and get names. Most years we have been through the county and gotten lists here, there and everywhere.

Q. I was speaking particularly of the Clerk. Does he have other duties?

A. Sure, he does. He is Clerk of the Court.

Q. He is Clerk of the Court also?

A. He is Clerk of the Court, and every one of us has other jobs.

By the Court:

Q. The names of prospective jurors are passed on by the Jury Commission and the Clerk simply prepares the list selected by the Jury Commission?

A. Yes, sir. As a rule we used to have breakfast together and the whole group would go out and talk to as many as we could all through the county.

By Lawyer Hall:

Q. When you went through the county seeking out new jurors what did you do, go to any particular places?

A. We go to everybody, particularly to stores, any places where people congregate. We wouldn't go from house to house. We go to people and talk to a group and ask them if they could suggest anybody. It isn't possible for us to know everybody in the county. We try to, but it is impossible. We get our list from everyone we can, who are people recommended to us by responsible people who are qualified for jury service. We get new names for our list by people telling us.

Q. How many persons would you see?

A. I wouldn't have any idea. The Clerk would have to tell you that.

Q. Any idea at all?

A. No. I know it is a lot of them. How many, I wouldn't [fol. 63] be able to say.

Q. Do you use any other means to secure others?

A. Yes. We have a list of clubs, just like I mentioned, the Union Association of Colored People, or whatever it is called—I don't know whether it is still in existence now—there was an organization over on Monroe Street, the Old Civic Betterment Society. We got a list sometimes of those that were good. I mean responsible people.

By the Court:

Q. Was that a labor organization?

A. Yes, sir. And labor and white organizations, and clubs, and some people.

By Lawyer Hall:

Q. No particular requirement from those clubs to be considered?

A. I don't know of any. But you can tell the members of Civic Clubs could be the people that would be more interested in civic affairs and, naturally, if they qualify they are put in for jury service.

Q. Then you only consult civic clubs?

A. Oh, no. That is just one of the avenues.

Q. Social clubs too?

A. Well, I don't know that we would use a country club, or things like that.

Q. Do you know whether or not there are any negroes on the jury list in Montgomery County?

A. Yes, I do. And if you consult today's jury roll—I cannot say how many—but I know one of them I had excused. You all agreed to excuse him. I think his name was Hathaway, or Hataway, one or the other. This man had a responsible place and I had to excuse him. And another one, I believe: Let me say this. We don't know when we take one out from the box whether he is white or whether he is colored. If I am correct, there are six or seven colored men on this jury. That is nothing unusual.

By the Court:

Q. You mean on the present venire?

A. Yes, on this present venire. That is what I am talking about.

By Lawyer Hall:

Q. Can you tell whether or not they are colored from the [fol. 64] person's address?

A. Of course, we get the address. That is the only thing we do have. We don't have any record to show he is colored or white. When I reach in the jury box for a card I have no idea who he is going to be.

Q. Is it possible to ascertain whether a man is white or colored in Montgomery County on account of his address?

A. No. The reason I say that, I cannot say—they live in the same neighborhood many times so it would be impossible—you wouldn't know whether he is white or whether he is colored, because some white people live in a district predominantly colored, and some colored people like in a district predominantly white, so it would be impossible for me to tell. I would say you can tell sometimes from his address. When you run across an address on Lake Street you know that is not apt to be colored, from his address I would presume it was. I could be wrong.

Q. Have you any idea how many negroes are presently on the jury roll?

A. I couldn't tell you how many are white and how many are colored, and I don't believe you could check the roll and find out because they are not listed as such.

Q. Do you know of any negroes ever serving on a Grand Jury in Montgomery County?

A. Yes, I do.

Q. How many?

A. I couldn't tell you that. We have had them to serve on the Jury. We don't look to see whether a man is colored or white when he is on the Grand Jury. One I particularly recall, a man named Ed Pierce, at the college; I know he has been drawn. Whether he actually served, or not, I wouldn't be able to say. He has been on the jury roll.

Q. What is the procedure for drawing Grand Juries?

A. Put those names in a hat, put a handkerchief over the hat and draw eighteen blindfolded. I couldn't tell when I draw them.

Q. Do you know of any occasions when two or more negroes served on the Grand Jury?

A. I can recall one served. I am telling you to the best of my recollection. I will tell you how they are drawn. It would be impossible to draw from here and exclude [fol. 65] the names of any negroes drawn right in front of everybody. The law doesn't permit that. Neither do we draw one because he is white. There is no way of telling whether they are white or negro when the names are drawn from the wheel. Slips of paper with the names of prospective Grand Jurors are placed in a hat, a handkerchief covers the hat entirely, and I reach in the hat and pull out one name at a time and that juror takes his place in the jury box.

By the Court:

Q. Am I right that prior to the actual selection of a Grand Jury a certain number of jurors' cards are drawn from the box?

A. Yes, sir.

Q. And what number, do you recall?

A. Fifty.

Q. That number is subpoenaed?

A. Yes, sir. That number is always less than fifty due to excuses, cannot be found, and so forth.

Q. The ones you draw?

A. They are drawn blindfolded from a hat. The Clerk prepares a list, their names are put on pieces of paper, those papers are folded and placed in a hat with a handkerchief over it; I reach in the hat, pull out a folded piece of paper and read off the name on it, and repeat that procedure until the Grand Jury is selected. Very few Grand Juries I haven't drawn that I remember. I never know the name of anybody I draw until that name is opened up.

By Lawyer Hall:

Q. You have drawn most Grand Juries since you have been on the bench?

A. Practically all of them, that is right.

Q. You charge them too?

A. I do.

Q. Have you any recollection of charging a Grand Jury of Montgomery County on which there was as many as two negroes?

A. I wouldn't know honestly.

Q. Do you recall charging a Grand Jury——

A. I am satisfied one or more. To tell you the truth about it, I couldn't say that because I didn't try to re-[fol. 66] member them.

Q. In your best judgment?

A. In my best judgment, I did, but whether that is so, or not, I wouldn't swear to it.

Q. Do you recollect your last Grand Jury?

A. No, I don't. I couldn't tell you the first man on there.

Q. Do you remember whether or not there were any colored—on it?

A. No, I couldn't.

Q. Do you know any colored or negro being on that Grand Jury?

A. No, I don't. If the name didn't come out of the hat I would not know about it. It never occurred to me whether there was, or wasn't. It could have been. When the names are drawn out of the hat they take their places in the jury box when they are drawn. There has never been any discrimination of the ones drawn, they are drawn blindfolded. Sometimes you get more, and the next jury may not be as many, or maybe more.

Q. So there is nothing on the cards themselves to distinguish——

A. Nothing on them at all.

Q. The race?

A. There is nothing to distinguish one from the other, as far as I am concerned when I pull them—when I draw them they are exactly alike.

Q. How are the jurors notified after they are drawn?

A. Well, the Clerk notifies them. They are turned over to the Sheriff in the usual course of business. Those jurors are notified.

Q. And the Sheriff serves the notices?

A. The Sheriff serves the notices.

Q. Are all the notices to jurors actually served?

A. No, they are not. Sometimes they cannot be found; sometimes they have a lot of trouble or sometimes they cannot find them at the address given. We get one address and then find they have moved to another address, you got the wrong address, and lots of people get jobs and leave town. We have that all the time. Sometimes we have to call in special jurors in order that we might have a full panel.

Q. Is it possible to designate the name of any negro on any Grand Jury somewhere along the line from the pulling of names from the hat to the service or formation of a jury? [fol. 67] A. It would be impossible for you to find that out. If there is a report on those, I cannot say.

Q. If it could be done?

A. It could be done. You could have the Sheriff here and ask him, but I don't believe it was done.

Q. Well, then, it could be done?

A. It could be done, that is right.

Q. If a juror wasn't served then, of course, he wouldn't appear?

A. Why, certainly.

Q. And he wouldn't be on the venire?

A. That is true.

Q. I believe this is a jury roll? (Indicating)

A. Maybe it is. I don't know much about that. The Clerk keeps it.

The Solicitor: The State will stipulate that is the jury roll.

By Lawyer Hall:

Q. How often do you prepare the jury roll?

A. You will have to ask the Clerk that. We meet from time to time in order to get those names. The law specifies certain days you are supposed to get them and we conform to it. It doesn't mean all of us have to be present every time we do that. The majority of the Board is present. The last time we met, to my best recollection, was either December or January. I am not sure, but somewhere in that period where the [illegible] says we have to meet. I don't remember the date of our last meeting.

Q. How often is that, once a year, or more?

A. The law prescribes a certain period of time and we try to adhere to it, at least substantial compliance as much as possible. Sometimes, you know, we go around visiting, and you consume a lot of time when you do that. We meet in between Courts. We cannot do that while Court is going on.

Q. But you do meet?

A. Yes, we do meet.

Q. Do you know whether or not you had a completely new jury roll the last time you met?

[fol. 68] A. It is my best judgment. The Board here don't prepare the jury roll, it is prepared by the Clerk.

Q. Who is the Chairman of the Board?

A. Judge Walter B. Jones.

Q. In listing persons for jury duty do you have any rule as to who you are going to list?

A. Oh, yes, we have to pass on them.

Q. What sort of yard stick do you use?

A. Well, we use—of course, we don't know everybody—but I will say the people left off the jury roll of both races, we just don't feel they should be on there.

Q. What particular yard stick do you use?

A. All right. We try to get men with a good reputation, between the ages of twenty-one and sixty-five, who are residents of Montgomery County, who we believe to be honest and upright, who have a certain amount of education and, if we do not know them, people in the community recommend them to us.

Q. What about their occupations?

A. Of course, you need to have knowledge of that, because there are certain occupations under our law that are exempt. For instance—I will give a concrete illustration—when we finally did get a list from that Union Association of Colored People they didn't have the ages on it, didn't have any occupations on it, and we told them they would have to give us that information before we could consider any list. They would have to show me their occupations, because many of them are exempt; have to show me their age, and they have to be residents of Montgomery County. I believe that you will find of both black and white now the most representative people in this town on the jury roll are barbers.

Q. When you say exempt, what do you mean, do you mean exempt under the law?

A. Under the law there are certain people, occupations that are exempt.

Q. They don't have to be exempt, do they?

A. No, they don't have to be exempt. They can waive their right of exemption, but we don't put them in there [fol. 69] when we know they are exempt because the average person don't want to serve on the jury.

Q. Do you know any persons on this jury roll who are exempt?

A. I am satisfied there are. Those in the National Guard, they join the National Guard, and unless we are notified their names are still in there. We have school teachers. When school is out they are not exempt. We have transportation people that quit. We have doctors that quit. The moment they quit their practice they are liable to jury duty.

Q. Are you saying you list them and let them serve?

A. No. As a rule we don't list them.

Q. You don't list them at all?

A. I say there are times we make mistakes. A man who don't make mistakes is one to be careful of.

Q. Do you know whether bus drivers are exempt under the law?

A. Bus drivers are exempt.

Q. If I told you we have listed here a Mr. William S. Allen, who lives at 129 Flood Street, operator for Montgomery City Lines——

A. There possibly could be bus drivers on that roll. That is one of the new sections added to the Code. I wasn't familiar with it until I started studying the law and I found out they were.

Q. Do you know whether railroad firemen are exempt?

A. I know an engineer is. I believe a firemen is. I rather you look at the Code.

Mr. Garrett: The statute is here and sets out the exemptions. I would like the Judge to look at the statute.

The Court: He has the privilege of doing that. You cannot Cross-Examine your own witness. You cannot ask him what the law says without showing him the law.

The Witness: I wouldn't attempt to tell you all the exemptions without consulting the Code.

Lawyer Hall: You are ruling I cannot ask the witness?

The Court: I am ruling you cannot examine him on that point unless you put the law before him.

Lawyer Hall: We except to Your Honor's ruling.

The Court: Exception noted for the defendant. Go ahead with your examination.

[fol. 70] By Lawyer Hall:

Q. Will you identify that for us? (indicating) We will go on in reference to that with some other member of the Commission present today. In the course of a year how many trials do you have in Montgomery County, civil and criminal?

A. It is impossible to tell because there is a police court, a Court of Common Pleas and a Juvenile Court. Judge Jones and I try all cases coming to our Court in this county.

Q. Your Honor is familiar with the racial make-up of the City of Montgomery?

A. I am.

Q. With reference to negroes and whites?

A. I wouldn't know the exact proportion, but would have to guess.

Q. What is your Honor's guess?

A. Sixty-forty approximately, but I wouldn't say that is it.

Q. Your Honor has observed negroes serving on trial or petit juries?

A. I have.

Q. In Montgomery County?

A. I have.

Q. Do you recall the largest number of negroes you saw serving on a jury at one time?

A. No, I wouldn't know.

Q. Have you ever seen as many as four?

A. It is impossible for me to tell you as many as four, or how many. I don't know. We would hardly pick a jury now without having over four.

Q. Four negro jurors?

A. I remember at one time there were very few. In fact, we were not able to get them until the last year or two.

Q. Does Your Honor recall a particular case you had as many as four?

A. No, not as many as four. I just testified about that. Many times you don't see any on a jury, they strike them off.

Q. Isn't it a fact that negroes are discriminated against on account of race and color by the Jury Commission of Montgomery County?

A. No, I would say they are not.

Q. You would say they are not?

[fol. 71] A. I wouldn't say they are arbitrarily discriminated against any more than white jurors by the Commission at any particular time. And I just don't think that there could be any such comparison made, in my opinion, because I believe the colored people, according to their education and their station in life, are as well represented as white people are.

Q. You say education and station in life. What have you in mind?

A. Until we are satisfied they are competent, and they satisfy us they are honest, intelligent, of good character and sound judgment, we would not put them on the jury roll. In other words, you have to consider both reputation and education. There had been a time when the colored population was not as well educated as the white population. Now, we have a different situation throughout for the better.

Q. Then Your Honor is saying——

A. As far as I am concerned, we make an honest effort to see that competent jurors are placed in the box, whether they be white or whether they be black. Not only that, I made every effort in selecting them. I know the others did too.

Q. Did you make a distinction?

A. We absolutely did not.

Q. Not at all?

A. Not at all.

Q. No check up to see whether they were white or black at all?

A. Not at all. No distinction when we selected them as to whether they were white or black. Of course, they were not probably fifty-fifty.

Q. Ever?

A. When we picked them out there was no discussion at all that we would put this man on because he is a white man, or take this off because he is a negro. None of that at all.

Q. I believe you did state you went to the Clubs?

A. We did. We didn't go from door to door to get names from them. We haven't been to the First Club. We wrote them and asked them to submit any names.

Q. You did those things at the colored clubs, you wanted some colored names?

A. Just like the white, yes. Not that we wanted particular ones, we wanted jurors, competent jurors.

[fol. 72] Q. When you get ready to fill your jury roll don't you go to colored organizations?

A. No. They are sending them constantly, they are sending names of jurors for our box. We are always seeking jurors. We don't just say we need some, so many whites and so many colored people, we say we need so many jurors.

Q. You do have a registered voter's list in Montgomery County?

A. We certainly do have.

Q. In your opinion, if a man became a registered voter he would be competent to serve as a juror?

A. That is not the criterion.

Q. Not necessarily?

A. It is not the criterion. We follow a definite policy in a matter of that kind. In other words, if he wasn't a voter we want to know why he wasn't, the reason for not being a voter.

Q. Are you using any man who is not on the registered voter's list?

A. Certainly. A man not on the voter's list could be selected as a juror.

Q. Do you think he would be good for jury service?

A. Yes, I do. We use them. Naturally, we go into their case, we want to know the reason for not being a voter. A non-voter can be just as good a citizen as one who does vote. It don't mean because he doesn't vote he isn't a good citizen.

Q. In your opinion, do you think everybody who is a registered voter of Montgomery County ought to be a juror?

A. No, I don't.

Q. You don't think so?

A. No, I don't think everybody obviously.

Q. Have you a particular reason for that theory?

A. Yes. No more so than I would say every golfer was a good golfer; every merchant was a good merchant; every doctor was a first class doctor. We have a lot of lawyers over the United States I wouldn't consider first class lawyers; lots of Judges I wouldn't consider first class Judges; a lot of barbers I wouldn't consider first class barbers; a lot of wives I wouldn't consider first class wives; and the same thing applies to husbands, a lot of them do not make [fol. 73] the best husbands. I wouldn't say just because a man is on the voter list he ought to be in the jury box.

Q. Under our law here in Alabama, they have certain requisit-s for voting?

A. That is true.

Q. It is required that he have good common sense?

A. That is right. I will say further, those persons could vote and still not be in the box. It is no reflection on us they are not in there because there are a lot of them on both sides not in the box, either white or black. If a person wants to get on the list all they have to do is contact me or the other members of the Jury Commission and if they are approved they would be put on there. And Rome wasn't built in a day. And one of the chief reasons they are not in there is that jurors are not paid enough. The average business

man cannot afford to serve on the jury. And that applies also to the laboring man, or anybody who works by the hour, having a wife and family to support, they cannot afford to serve on the jury and get $6 a day. They don't want to come, and I don't blame them.

Q. Do you list all the teachers in Montgomery County on your roll?

A. No, for the very reason that the law has been changed to exempt them while teaching. We did previous to that. Every time we called them they were teaching. They are exempt during the time that they are teaching.

Q. Do you exempt all persons sixty-five or over?

A. If they claim it.

Q. If they don't claim it?

A. They have a right to claim exemption, but if they are all right physically some of them like to serve.

Q. People who are sixty-five, and teachers and various types of occupations, under our law might claim exemption?

A. Usually they get over it and come to us and want to be put on the jury.

The Court: I understand the motion isn't directed to the exclusion of any class except the colored race; is that correct?

Lawyer Hall: Yes, sir.

[fol. 74] The Court: You are asking questions of this witness that have nothing to do with that at all.

Lawyer Hall: We wish to include everybody.

The Court: I understood it was a motion directed to the systematic exclusion of members of the colored race. Go ahead.

By Lawyer Hall:

Q. I believe you said a moment ago, as a matter of fact negroes could be identified?

A. No, I didn't. You misunderstood me. I said no negroes were on there; also no whites were on there. We cannot under law.

Q. You do know some?

A. I do know some, sure, of both races.

Q. Would you consider the negro teachers of Montgomery County?

A. No, I wouldn't. Every time the teachers are off for any length of time we don't have Court. We have Court in June, and we have a criminal term in July, but the majority of the time we have Court is when the school teachers are teaching.

Q. They are excused the end of June, aren't they?

A. That is right. We have to summon special jurors. Some of the regular jurors are not found, some are sick, and some never turn up in Court, and we don't have enough jurors to run the Court, although we send notices out there for them. Many of those people come in and get excused. It isn't right, but that is the law.

Q. Isn't it also true other people than old persons can claim exemption?

A. That is right. We excuse any person who is exempt by law.

Q. Any person who can present a valid excuse why he should not serve would be excused?

A. Certainly.

Q. How about engineers, bus drivers, train men, subject to call at any time?

A. Well, I didn't know until recently that the law applied to them, and until I looked it up I didn't recall that exemption reached some of those people. I didn't know they had been put in there. As a rule, they are high class people.

[fol. 75] Q. Then I understand you to say your Jury Commission will add no names of persons indicated here in that law?

A. Oh, no; oh, no.

Q. Will you please clarify that?

A. As I said, some of them asked to be put on. Some of them would never think of asking as a rule. We put on those who want to serve and we feel they are all right.

Q. They are never put on the roll until they ask to be put on?

A. Some of those, as you said, some people who worked on the railroad and become retired, some men in that class, many of them although they are retired want to be on the jury, and many of them come in and say they would like to get on the jury, and if they are the right kind of people we are glad to have them.

Q. Would that be true of policemen?

A. I haven't known of many people being retired, not in Montgomery.

Q. If I told you there is one person whose occupation is listed as patrolman——

A. Those people get on in some other occupation, get a job as patrolman and was already on there.

Q. You revise your list?

A. We revise our list, of course. I am satisfied that man wasn't a policeman when we put him on the jury roll or we wouldn't have put him on there. While you may have different views about it, we are not going to put everybody in.

Q. What we are trying to show—we don't want to keep on the same old subject—you don't call in persons who are very familiar with all their neighbors in the community?

A. Let me correct you here. We have requested responsible people of the negro race to give us names. I mean high class ones. Let me give you this illustration with reference to seeking names for the jury. I am not going to mention the man's name, it might be embarrasing to him. I asked him to give me a list of around twenty people. It took him a month to do it, and it didn't contain any real high class people we considered were competent to serve on the jury. We felt he was honest in trying to get a list of people he [fol. 76] thought we might put on juries because he is that kind of a person.

Q. Couldn't that be because he was trying to get on his friends?

A. His friends, I would say, would be high class.

Q. Then you had to depend on consulting one or two negroes?

A. Oh, yes, we have to depend on a group of people. We don't know everybody in Montgomery County. That would be impossible.

Q. Could Your Honor name me any of your sources for negro jurors?

A. I probably could, but I don't want to because it might be embarrasing to them.

Q. Could you after you looked through this roll?

A. I couldn't take that book and tell you whether a man is white or black on there, unless I happened to know him personally and knew where he lived.

Cross-examination.

By Mr. Garrett:

A. In making up the jury roll among your duties is that of eliminating anybody not of good character, and eliminating anybody convicted of an offense involving moral turpitude, anybody afflicted with any disease?

A. Yes. We don't want them on there wtih a disease if detected; we don't want anybody on there who has been convicted of a crime involving moral turpitude, or habitual drunkard, or a user of narcotics, or has been in the penitentiary. We try to keep the guard up to get people on that list out of that category.

Q. You are familiar with this statute defining exemptions?

A. That is right.

Q. Is this the statute titled "Persons Exempt from Jury Duty?"

A. Yes, that is the amended statute. The amendment is in the pocket parts in the back of the book.

Q. Section 3, Title 30, as amended?

A. That is right.

Q. "The following persons are exempt from jury duty, unless by their own consent: judges of the several courts; attorneys-at-law during the time they practice their profession; officers of the United States; officers of the Executive Department of the State Government; Sheriffs and their [fol. 77] Deputies; Clerks of the Courts and County Commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actively engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama Public Service Commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators, when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers

when engaged in the regular performance of their duties; the superintendents, physicians, all regularly employees of the Bryce Hospital in Tuscaloosa County and the Searcy Hospital in Mobile County; officers and enlisted men of the National Guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such."

Q. That is a pretty all-embracing exemption, isn't it?

A. A big exemption.

Q. And many of the qualified colored people fall within one of those exemptions?

A. Quite a few of them. The ones most affected by that section are the school teachers. Of course, the doctors and dentists, and our funeral directors.

Q. From the series of names, white and colored, as soon as they are posted in the jury roll, does the Jury Commission then put them in the box?

A. We do.

Q. I understand you stated to the opposing attorneys you did everything you could to get qualified jurors over the county?

A. Every one we put in there we felt were qualified people.

Q. I believe you said you had asked for a list from the National Association of Colored People?

A. Not a list. A list was sent to me of ones recommended [fol. 78] to me by the head of it.

Q. For jury duty?

A. Yes, sir, by the head of it. And the head of it was put in and he served on it. I know he did, but I cannot say whether the rest served. Those who qualified were put in the box but I couldn't say whether all of those members have ever served. But I know he has served because he came up and told me so when he was here in Court.

Q. I believe you stated in the discharge of your duties as a Jury Commissioner you did look at the poll list as one of the sources?

A. That is right.

Q. Did you look at the telephone directories?

A. That is another source that helped us pick them.

Q. How about the tax rolls?

A. We do the same thing.

Q. Name the total number of sources you have just for the record.

A. Well, we use the clubs, as I have already stated; we use different individuals we know, and different ones come in and recommend people.

Q. You make trips out through the county?

A. Yes, sir, we do.

Q. And stop in public places?

A. We do, and secure a list. However, in the last few years the country people are moving to town and we don't get many names that way. When you go in the Beats I mean.

Q. I don't think you have been asked if you use the City Directory?

A. Use the City Directory, the Clerk does. I would say off hand I believe insurance agents are next to barbers, because they predominate.

Q. Do you know how many negroes there are on today's venire?

A. I don't know for sure. I would say six or seven, maybe more. I know one personally who got excused, and he is over sixty-five years of age. We didn't know it when we got him on there.

Redirect examination.

By Lawyer Hall:

Q. I believe you answered a moment ago you know there were six or seven negroes on today's venire?

A. I said I believed there were. I didn't count them, but I believe there were. I am not sure.

[fol. 79] Q. You don't know how many?

A. I didn't count them and I cannot say. I would say in my opinion there were that many.

Q. Is it usual to find that many negroes on a jury panel?

A. Lately, I would say the last few years, we have sometimes. I remember at one time we had seven, I believe, at one time on the jury, and one of them asked to be excused. And I remember that because they all sat together. It would be impossible for me to remember the number, whether two on the jury or ten on the jury, or what number.

Q. Did any of them serve on a jury?

A. I couldn't say. And I will tell you this. Several colored jurors have served on white cases, trying white men; just like white men trying colored.

Q. Criminal cases?

A. Criminal cases in this Court. I have seen them do that. Two of them on a robbery case where a man was being tried for robbery—sat right in the jury box.

Q. I believe you were asked a moment ago on Cross if a majority of qualified negro persons who might serve as jurors were not in the exempt classifications?

A. I wouldn't say majority. I would say a good number of school teachers—that applies to white as well as black—you got a class of people that ordinarily make excellent jurors, and while they are teaching for nine months in the school room they are exempt from jury service. You will find at this time a great many school teachers study in the summer time, taking special courses and you have another problem to face there.

Q. It isn't necessarily so a school teacher would be a good juror?

A. No.

Q. Or better educated?

A. No.

Q. Would there be any special advantage to negroes of Montgomery County to require that they get public school training, grades and elementary and secondary schools?

A. I don't know what advantage. They are getting that today. They have all the facilities set up to get a public [fol. 80] school education and from there go on to college. You have that right today.

Mr. Garrett: This is not anything I brought out in my Cross Examination. I hate to object, but at the same time it should be limited to what I brought out. I want to interpose an objection on the ground that it was brought out on Direct Examination.

Lawyer Hall: We want to find out if they Jury Commissioner has exercised discretion in the course of his job. We feel we should understand how he is doing his job as Jury Commissioner.

The Court: You can ask him about doing his job. It has been rather argumentative. Go ahead with your questioning and let us see what you were going to ask.

Lawyer Hall: That is all.

WALTER B. JONES, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please?

A. Walter B. Jones.

Q. Occupation?

A. Presiding Judge Fifteenth Judicial Circuit of Alabama.

Q. How long have you been presiding Judge?

A. Twenty years.

Q. You are also a member of the Montgomery Jury Commission?

A. I am not. I am a member of the Board of Jury Supervisors of Montgomery County.

Q. You are also Chairman of the Commission?

A. I am not chairman; I am president.

Q. President. Is that under the general law?

A. It is under the general law with local application. It was established originally in 1933.

Q. You say you are President of the Montgomery County Jury Commission?

A. Board of jury supervisors. We don't have a Jury Commission.

Q. And how long have you been president?

A. Since it was established in 1933, I believe. It was first [fol. 81] established in the year 1923, in general laws of 1923, beginning on page 260, and then later amended in 1939 by our local laws, and since 1950, along there, it was amended to come within the qualifications.

Q. Isn't it a fact that negroes are discriminated against by the Jury Supervisors of Montgomery County this year, 1955?

A. No.

Q. How long have negroes been officially recognized as jurors in Montgomery County?

A. Oh, I would say over twenty years anyhow.

Q. For over twenty years you say they are not discriminated against?

A. Cannot always tell whether they are white or black. No way of telling. There is nothing put on the jury roll to show he is a negro. No statement made like that.

Q. Tell me, how does the Board of Jury Supervisors go about its duties? Who make up the Board of Jury Supervisors?

A. The Board of Jury Supervisors is composed of the two Circuit Judges, Probate Judge, Clerk of the Circuit Court, and Sheriff of the County. The Clerk gets up the jury roll with the assistance of the Jury Supervisors; we fill out jury cards with the names of people who come up to certain qualifications. And the qualifications prescribed by law are these: "The Jury Commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. No person over the age of sixty-five years, shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so."

Q. How do you ascertain whether a prospective juror has the qualifications you have referred to or should be disqualified?

A. We search the records of the Court as far as criminals are concerned. Naturally, none of the Jury Supervisors knows whether a man is a habitual drunkard, or not. If we [fol. 82] did, we certainly would disqualify him. Whether a man can read or write English, we would have to go to him to find out.

Q. Have you ever asked them if they paid taxes?

A. I don't recall asking them. That is not one of the qualifications. If they are examined the law indicates what their qualifications are.

Q. Do you ever examine them?

A. We might do this. We ask them if they can read and write; and if they cannot read and write they have to stand aside.

Q. Do you mean after the are put on the jury roll?

A. Yes, sir.

Q. And names are put in the jury box?

A. That is right.

Q. When you are acting as Judge?

A. Qualifying them.

Q Then you ascertain whether or not a juor can read or write?

A. Yes.

Q. How do you ascertain those who are victims of disease?

A. You have no way of telling whether he is afflicted with a permanent disease. You find out whether a man is crazy, but you cannot tell whether he has a chronic disease except that he might admit it to us. We have no way of finding out whether someone has a permanent disease unless we have a physician to advise us.

Q. That is after they are put on the list?

A. After they are put on the list.

Q. And the names put in the jury box?

A. And drawn out of the jury box, summoned, and thereafter appear in Court.

Q. And you don't know the identity of any juror, as I understand the Court?

A. That is right.

Q. At the time they are taken out of the jury box?

A. From the jury wheel.

Q. Don't you know who they are when you pick them out of the jury box?

A. We have no way to identify them.

Q. As a matter of fact, you just don't know?

[fol. 83] A. No way to identify them, no.

Q. How do you make up the jury roll?

A. They jury roll is made up this way. We make up lists of responsible people that we think will make good jurors,

and we get together and call off four or five names and discuss their qualifications, and if they meet the qualifications they are put on the jury roll.

Q. How often do you do that?

A. I think we get those names at least once or sometimes twice a year. They wouldn't be put in the jury box until the jury box is almost empty, or not enough jurors for the next jury.

Q. When you get this done you place them in the book?

A. The first thing we do is place them on cards, go over them first of all. We have a regular card the law prescribes showing the name, occupation, business address, residence address. Those four things are placed on the card.

Q. Are those cards put in the box?

A. Yes. First of all we have to approve them, whether they are going to be put on the roll, or not, whether to put them on the roll, not at the same time those cards are put in the jury box.

Q. You put them on the roll before you put them in the box?

A. They are put on the card first. You might want to throw out some of the cards.

Q. Where do you secure the names that are put in the jury box?

A. Frequently they call my office here, and I get them in the mail, and in person. Sometimes we consult the voting list, or know personally a certain number.

Q. Does the roll show the precinct they are from?

A. I don't think it shows it. It is not a mandatory thing to put in the precinct.

Q. It isn't referred to there by precincts, referring to the statute?

A. I see no precincts here.

Q. Not in the statute?

A. Nothing in the statute of Alabama about precincts, as I recall. If you take the time to look it up on the map you can find out what precincts they are in.

Q. Then you have reference to Section 20, of Title 30, of [fol. 84] the 1940 Code of Alabama?

A. Let me see what it is.

Q. It states: "The Jury Commission shall meet in the Court House at the county seat of the several counties an-

nually, between the first day of August and the 20th day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempt by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order at the Jury Commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given." That is what you had reference to?

A. That is the Section.

Q. "Upon the completion of the roll the Jury Commission shall cause to be prepared cards." Have you ever, or do you contact clubs and that sort of thing?

A. Contact who?

Q. Clubs, social clubs?

A. I have never contacted any social clubs, none except Civic Clubs, and I have a personal acquaintance with a lot of those people. Quite often I have been asked to come and visit a few of those, but I never have. A lot of people write me they would like to get on the jury, and if they qualify they are put on the jury roll. I remember one time a man asked me to put him on the roll, which I did, and the next time I saw him he asked me to take him off the jury roll, and he was very mad because I had put him on there.

Q. Where do you get the names of colored jurors from?

A. Personally I have contacted a number of representative colored people and asked them to make recommendations. And we have tried in the last seven or eight years to secure qualified jurors. Whenever I see a negro on the jury I talk to him to secure a list of qualified members of the race to put in the jury box, and frequently they have given us some. We have gotten a few of them, not many.

Q. How many negroes do you know personally?

A. That is hard to say.

[fol. 85] Q. On the jury roll?

A. I cannot say. There is no way of telling whether they are black or white on the jury roll.

Q. Can you say what number there are that you know, you are acquainted with? I am not asking you to tell me names in this book. How many you know.

A. That would take a bit of time, take me some time.

Mr. Garrett: We object to that unless he limits it to the jury roll.

The Court: I understand it was.

By Lawyer Hall:

Q. We respectfully want to know how many negroes you know whose names are on this roll.

The Court: I think his answer was he didn't know, he would have no way of knowing.

The Witness: That is right.

By Lawyer Hall:

Q. Is it possible for you to know any of them by their names?

A. I might.

Q. Are you personally acquainted with clubs in Montgomery County?

A. I certainly am not.

Q. You are not personally acquainted with clubs, how they operate in this county?

A. Acquainted with some, not all of them. There are getting to be a great number of them just outside of the city —they are in the county too—but whether of good character or bad, I cannot say.

Q. Are you acquainted with the practice of negro clubs sending in names of qualified citizens of good character requesting they be put on the jury?

A. We have been getting a number of lists from you and your crowd. I wouldn't want to state whether I even could cull out all the negroes I know.

Q. The only thing I want to know is whether it would be possible for you to name me any negroes that you know whose names are on this jury roll.

A. I don't know whether I can do that, or not. After I [fol. 86] checked the jury roll I might do so. Formerly the City Directory of the City of Montgomery set out the names of everybody over the age of eighteen, or fourteen, whatever it is, and anyone of the negro race had a (c) after the name. Here recently, the past year or so, that doesn't appear in the City Directory and we have no way of telling. If I see a negro lives in Patterson Court, I believe it is right

to assume anyone living in that Court is a negro because it is a Negro Housing Project.

Q. It is understood only negroes live in Patterson Court?

A. That is right.

Q. Is that true of any other section?

A. You also have Cleveland Courts, and another place out that way where whites and negroes live pretty closely together and no way of telling.

Q. If you saw a name whose address was any of those places, you could?

A. I might assume that person was a member of the Negro race. It wouldn't be conclusive. I cannot get on the stand and swear to it.

Q. You are a native of Montgomery?

A. Born and raised here, and live in the same home, and sleep in the same room I was born in sixty-seven years ago.

Q. Lived here all your life?

A. Yes.

Q. Name one negro you know on this jury roll.

Mr. Garrett: We object.

The Court: Objection overruled.

The Witness: If I had the jury roll I could probably go over it. We have some negroes I see over here. I wouldn't recall their names.

By the Court:

Q. You said you had been Presiding Judge of this Court twenty years. How long before that?

A. Total on the Bench of thirty-five years.

Q. During the time you have served as President of the Board of Jury Supervisors, and as a member of that Board, have you or any member of the Board of Jury Supervisors [fol. 87] to your knowledge excluded, declined, or failed to place upon the jury roll the name of any person by reason of his color, race or creed?

A. Never have.

Cross-examination.

By Mr. Garrett:

Q. They have asked you numerous questions about your qualifications. You have been a Montgomery Circuit Judge and have been Presiding Judge how many years?

A. Went on the Bench in 1920, and when Judge McCord ran for governor in 1935, I succeeded him as Presiding Judge.

Q. And have lived here how long?

A. Sixty-seven years.

Q. Your father was a Federal Judge?

A. That is right.

Q. And governor of the State?

A. That is right.

Q. You are President of the Alabama Bar Association right now?

A. Yes, sir.

JOHN R. MATTHEWS, having been duly sworn, was examined and testified as follows:

(Jury roll marked "Defendant's Exhibit 4, 5-30-1955, WHL," for identification.)

Direct examination.

By Lawyer Hall:

Q. Will you please state your name?

A. My name is John R. Matthews.

Q. What is your occupation?

A. Clerk of the Circuit Court of Montgomery County.

Q. How long have you been Clerk of this Circuit, sir?

A. Twenty years.

Q. As Clerk of this Circuit you are also a member of the Jury Commission of Montgomery County?

A. I am.

Q. How long have you been a member of such commission?

[fol. 88] A. Twenty years.

Q. You also are Clerk of that Commission?

A. I am.

Q. As such Clerk what are your duties?

A. My duties are to keep the jury roll, and act as a member of the Commission to help select names and get names for the jury box.

Q. Do you have any particular duties as set out under the statutes, Alabama Statutes, other than those which you have enumerated?

A. No, except I keep the roll and keep cards of the different precincts of the county.

Q. Have you visited all the precincts of this county?

A. I have, innumerable times.

Q. How often do you do that?

A. Once or twice a year.

Q. Do you list when you make such visits the names of all men over the age of twenty-one?

A. Different times we get them through the mail, and list the names and make a card for them.

Q. How do you get those names?

A. Through various people over the county.

Q. You mean you inquired from individuals?

A. I certainly did.

Q. Did you use any tax lists or other means of getting any names?

A. Poll lists for one thing, City Directory if they don't live in the country, in the outskirts of Montgomery.

Q. Are there any other sources of information that you have to get a list of names of prospective jurors?

A. Telephone directory, City Directory, poll lists. I think that is about all the lists we use.

Q. Is it a fact negroes were discriminated against in the selection of juries in Montgomery County?

A. They are not.

Q. You say that is not true at this time; is that right?

A. It is not true at this time.

Q. Has it ever been true?

A. I don't know whether it has ever been true, or not, [fol. 89] and certainly not true now; nor has it been true for the last several years. We did the best we could. We haven't been bragging, but I say it is the best job that anybody could have done.

Q. Is that, or not, true during the tenure of your office at any time?

A. No. I will not say twenty years ago they had negroes in the jury box, or weren't in there. I am not going to sit here and tell you they were or weren't. Not in the last ten years anyway.

Q. When it was decided to include names of negroes how did you go about getting those names?

A. Contacted many of the reliable negroes in Montgomery County we knew, asked them to give us names, and what names we knew ourselves, and going down the poll list. I have had negro men come to my office and go down the poll list with me. "And we selected those names that way. That was the method.

Q. How did you ascertain who are reliable men?

A. Just as I told you, talking to colored people we knew.

Q. I am trying to understand something you said. You said you got the names of negroes from reliable negroes that you know?

A. That is right.

Q. What I am trying to find out is how you know the negroes you know are reliable?

A. I took them to be reliable. I don't know. I think they are reliable. I wouldn't have talked to them if I didn't think so.

Q. So they are personal acquaintances of yours; is that right?

A. Sure, they are.

Q. Are those persons on what you have referred to as the jury roll all honorable and reliable persons?

A. Oh, yes.

Q. How many negroes would you say are on that roll?

A. I have no idea. I never have stopped to count them. I know they haven't been excluded on account of their race. I know that. Furthermore, I know there are some good colored people here whose names are not on the list, just like there are a good many white people whose names are not either. We did the best job we possibly could to get [fol. 90] them. Nobody is perfect.

Q. How many persons' names are on that roll offhand?

A. I don't know. I never have counted them. I couldn't tell you.

Q. Are you a native of Montgomery?

A. Lived here all my life, sixty two years.

Q. I show you this book which purports to be a jury roll for Montgomery County, marked Defendant's Exhibit 4, and ask you to tell us if this is the jury roll of Montgomery County?

A. That is right.

Q. That is the present jury roll?

A. That is it.

Q. If you go through that book do you think you could tell the names of persons on there who were colored and the names of persons who were white?

A. Some I know, of course, but as to the rest of them, I couldn't tell you whether they were white or negro. When those jurors were qualified this morning and stood before the Court, some of them I didn't know whether they were white or colored until they came and stood up. I had no idea. I couldn't tell you this morning at eight o'clock how many colored people were on this jury list, or anything. Now, I can tell you.

Q. Can you tell me how many?

A. Yes, I can, because they stood there.

Q. You are talking about the present panel?

A. Yes, the present panel, sure.

Q. But you don't know how many on the jury roll?

A. I wouldn't have any way of knowing.

Q. You have the residence as well as the occupation?

A. You have the residence and occupation here going down the list, of course.

Q. What you do that and count the number of persons?

The Assistant Solicitor: We object to that, unless he can say he knows they were negroes. He has testified he knows some of them personally, but as to the others I don't see how he could possibly tell.

[fol. 91] The Witness: It would take an endless time to go over the list and I am not going to try.

The Court: I am not going to require the Clerk to go through the roll and make up an incomplete list of those who may or may not be white, or colored, or any other race. An exception will be noted to any ruling I make overruling your objections.

Lawyer Hall: Our objection is based on the fact the witness, our witness, cannot identify a single negro being on the jury roll and cannot name any, in spite of the fact he has lived all his life in this county and been a public official, and consulted reliable negroes with respect to the jury roll. We want to find out if there are any negroes on the roll.

The Court: You can ask him if there are any negroes on the roll to his knowledge.

The Assistant Solicitor: A number of them are present here in Court this morning.

Lawyer Hall: The witness testified he can identify names of some negroes by going through that book. We insist we have a right to see if he can. We also would like to know how many names are on that roll, whether they are negro or white.

The Witness: I told you I didn't know.

Mr. Garrett: This is Direct Examination, not Cross Examination. Mr. Matthews was called here by the attorneys on the other side. Now they are attempting to Cross Examine him.

By the Court:

Q. Is there anything on the roll there by which you or any other persons could simply look at it and determine their race, color or creed, any other way only by their name and address?

A. No way under high heavens, unless I personally would know the man.

The Court: I sustain the objection. I am not going to require him to go through the roll and simply point out the names of ones he might personally know.

Lawyer Hall: The witness testified he could probably pick some out.

The Court: I have already ruled and my ruling stands, and an exception is noted for the defendant.

[fol. 92] Lawyer Hall: Do you mean I cannot show how many names are on the roll?

The Court: You may ask the question whether he has counted them.

By Lawyer Hall:

Q. Do you know how many names there are on the roll?

A. I never have counted them.

Lawyer Hall: Will Your Honor give me the right to count them?

The Court: Not at this time.

By Lawyer Hall:

Q. I would like to ask this witness how many names you took out, and then how many names are negro, what proportion you had on the jury venires the last year?

A. If you counted those names and found there was five hundred names on the list, unless you know the names of all the colored people, I don't know. We never have tried to separate them. Under the law we couldn't do that.

Q. Are any of the names in that book colored?

A. Why, sure, they are. Seven or eight of them in Court this morning, weren't they? Their names are in this book.

Q. Give me the name of one negro.

Mr. Garrett: We object. That is the same question.

The Court: The objection is sustained, and an exception is noted for the defendant.

Lawyer Hall: This is a supplementary question.

The Court: I have already ruled.

Lawyer Hall: We take an exception, and the basis of the exception is that the defendant is deprived of due process guaranteed him under the Fourteenth Amendment of the Constitution of the United States, and deprived him of his rights of fair trial.

By Lawyer Hall:

Q. How many negroes are on the present venire?

A. If I am not mistaken, there are about eight or nine. As a matter of fact, one colored juror came to my office [fol. 93] during the recess for lunch and told me he had forgotten to appear here this morning. His name is Elisha James. He will be in Court tomorrow morning. I think Elisha James is his name. He wasn't here this morning when I called the list. I think with him there will be about eight, if I am not mistaken.

Q. Have you a copy of the present venire?

A. Yes.

Q. Will you refer to it?

A. Let us look for Elisha James while it is fresh in my mind. Elisha T. James. He is a colored man.

Q. 1410 South Hall, Elisha T. James?

A. Elisha T. James, 1410 South Hall. The reason I know he is a colored man, he was in my office at 2 o'clock

today and told me he forgot to report here this morning. In the meantime maybe the Sheriff might have gotten in touch with him. I don't know.

Q. Do you think there are any other negroes on there you can recognize?

A. On this list?

Q. On this list.

A. I don't know. I will see if there is anybody there I can remember.

Q. I believe you testified there are some six, seven or eight negroes?

A. Here is one right here I remember. (Indicating)

Q. Do you recall his name?

A. R. B. DeWitt. I know he is one.

Q. How do you know?

A. I saw him standing there this morning when I called the list.

Q. Are you personally acquainted with him?

A. No, I am not acquainted with him, but know whether he is white or black. His statement will show that.

Q. You heard him respond to his name this morning?

A. Yes.

Q. And you know he is colored?

A. I know he is colored.

Q. Do you recognize any other names on that list?

A. Here is one here, I imagine, Walter Nesbitt. He is a colored man, but was returned not found, they didn't find him. I don't know why they didn't find him. Let us [fol. 94] see what the return shows. Walter Nesbitt is in Detroit, the Sheriff's return shows. That would make about nine or ten we have on there counting him.

Q. What is the total number of names on that venire?

A. One hundred the two together.

Q. If you have ten negroes on here what would be the proportion?

A. That would be ten per cent. I don't know.

Q. What is the racial ratio in Montgomery County?

A. Oh, I don't know. I imagine about forty per cent colored—I imagine, now,—I don't know.

Q. Have you ever known more than ten negroes' names to be on a venire, more than ten?

A. I wouldn't say I have known more than ten, no. And we have had juries up here quite often where fifty names are drawn and we have five or six on the jury.

Q. For all jury service, such as the Grand Jury of Montgomery County?

A. Any number of times, yes.

Q. When was the last time?

A. I wouldn't say for sure, but I know—I remember last summer at one time two or three negroes were picked at one time. I think it must have been about last July. I cannot recall the year, but I think that is right.

Q. Did any negroes serve on the last Grand Jury in Montgomery County?

A. I don't think any were drawn from the hat, but I think there were some drawn on the venire. All the names are put in a hat and eighteen come out.

Q. Do you recall the Grand Jury which indicted Jeremiah Reeves, Junior, in 1952?

A I wouldn't say I recall the exact jury. No, I don't. I know it was a Grand Jury of Montgomery County. That is all I can tell you. I haven't checked up to see.

Q. Do you know whether or not any negroes served on that Grand Jury?

A. I am not sure about it at all. I wouldn't say; I couldn't answer one way or the other.

Q. Do you know whether or not any negroes served on any Grand Jury of Montgomery County in the year 1952?

[fol. 95] A. On any Grand Jury in the year 1952?

Q. Yes, sir.

A. I wouldn't want to answer that unless I went over every one. I know they did. I wouldn't swear to that unless I could check them, but I know they did serve—I will tell you that—plenty of them.

Q. On the Grand Jury?

A. Oh, I don't know about plenty on the Grand Jury. We only have four Grand Juries a year. I don't know whether they served, or not, in 1952. I am sure they did though.

Q. Do you remember whether a negro served on a Grand Jury of Montgomery County in 1953?

A. I wouldn't swear to that one way or the other. There was a good chance that they were drawn. Whether they served, or not, I don't know; but I know they have served

on the Grand Jury though many times. Their names have to be drawn out of the hat to get on any Grand Jury.

Lawyer Hall: We would like to excuse this witness until after our count of the names in this book and then we will have some further questions.

The Witness: Without going over all the various names here, I would estimate them to be approximately around three thousand names, to the best of my knowledge.

By Lawyer Gray:

Q. Three thousand.

A. Around that. I wouldn't want to testify under oath that is the exact number, but in my best judgment there are around three thousand names. You might get more or you might get less if you count them. If you do, all right.

Q. Assuming there are three thousand names of persons eligible for jury service on the present jury roll of Montgomery County, Alabama, what percentage of those names would you say are colored?

A. You asked me that once before and I told you I didn't know.

Q. We didn't have the three thousand at that time.

A. I wouldn't know if there were ten thousand. I wouldn't know. We don't separate them.

Q. You have no opinion at all as to the number of negroes [fol. 96] you had on the jury roll?

A. I couldn't tell you to save my life how many there are in the box. I don't know.

Cross-examination.

By the Assistant Solicitor:

Q. I will ask you when the jury box was last refilled?
A. It was refilled about the first of January.
Q. When did you make a new jury roll?
A. The roll was made about that time.
Q. The first of January, 1955?
A. Yes, sir.
Q. Did you also make new cards up for the jury box?
A. Yes, sir. Every card has been revised, all of them.

Q. Will you please take this jury roll and take any name you find on it at random and tell us exactly what information is shown on the jury roll about any juror you pick out.

A. Here is one on the list beginning with the capital A's, Mr. Zack N. Azar, Jr., I see his brother, Edward J. Azar, over there now. Zack Azar is a salesman, living at 3356 Gaston Avenue, and occupation is American Hat Company. That gives you the information about Zack Azar.

Q. Can you tell from the jury roll whether a man is white or is a negro? I am speaking about Zack Azar.

A. No he is a white man, but you couldn't tell from the jury roll.

Q. You couldn't tell from the jury roll?

A. No, not a bit.

Q. Based on that jury roll, do you make out cards for the jury box?

A. Yes.

Q. All the names on the jury roll are put in that jury box?

A. All the names in the box can be found on the jury roll.

Q. I would like to have the jury box here and would like you to open it and show us one of the cards you pull out and give us the name that is on the card.

A. Here is a card, A. L. Anderson, Fireman, 474 South Court Street, L & N Railroad.

Q. The card is identical and corresponds with this? (Indicating)

[fol. 97] A. The card has a number on it. The only thing on that card there is the man's name, his occupation, residence, place of business, and a number. And the number is placed there so we can match it up on the jury roll. He has number 49 on this card, and you turn to number 49 in the A's.

Q. And you find the name?

A. No, sir, you couldn't tell for sure.

Q. You say the jury box was revised in accordance with the jury roll in January, 1955?

A. That is right.

Q. That is after this case was argued before the Supreme Court of the United States?

A. Oh, yes.

Q. Have you participated as Clerk of the Court in striking most of the juries in this county in criminal cases?

A. Yes, I have.

Q. As part of your duty, during the time they are striking the list of jurors, you strike off the names as the numbers are called by the various attorneys for each side?

A. That is right.

Q. How long have you been the Clerk of this Court?

A. Twenty years.

Q. I want to ask you as to the general practice, whether counsel for the State or counsel for the defendant strikes most of the negroes off?

Lawyer Hall: We object to that, if Your Honor please.

The Court: Objection sustained. I don't think it is relevant to the issue before the Court.

The Assistant Solicitor: Counsel for the defendant has repeatedly phrased his question how many negroes has served on the jury. If they are being struck off by the defendants' lawyers we think we have a right to inquire into that.

The Court: Under our system this Court isn't going to be influenced by the number of jurors either side strikes off the juries. The question is whether or not they are sys-
[fol. 98] tematically excluded from the jury roll or jury cards in this county. We are getting into a matter of speculation on something the Clerk would not know, who struck what juror off the list. I have sustained the objection to it.

By the Assistant Solicitor:

Q. Over the recent years, as Clerk of the Jury Commission, have you had any individuals come to you with the names of people, negroes qualified under the statute, and under the requirements of the statute, to serve on the juries?

A. Any number of them.

Q. Would you say there would be quite a few?

A. Yes, sir, quite a few.

Q. Could you give us the names of any of them?

A. Well, a colored man by the name of J. E. Pierce. I do know he is a Pierce. I don't know whether that is the initials. I asked Pierce for a list of names. He is a leader among the colored race, and he has given me a few names.

I asked him for a list of names two or three times, and the third time I asked him he sent us a list. I think he sent in a list of thirty or forty names, maybe as many as fifty, I think, the last time. We put every one of those names in the jury box. They are all in there. And a colored man by the name of D. Caffey. D. Caffey at one time was at the head of, I think it was, the colored Elks Lodge here. That is my recollection. He is a leader among his race anyway. Asked him for names four or five times, and never have gotten any as I remember now. There is another colored man by the name of Carter, better known as "Bullet," in the Probate Office. "Bullet" is pretty well known among the colored people in Montgomery. I asked "Bullet" to come over to my office. He came over, and I got out the poll list of colored voters. I said, "Bullet, you go down this poll list and you name me every colored person, the ones you know to be all right to put their names in the jury box." He spent about thirty or forty minutes there going down the list. Finally he told me, he said, "I will have to go over to the Probate Office because I got something else to do, but I will be back and let you know later." Later on he came back with a list of names. Those names we put in the jury box, all of them that he gave me. A colored man by [fol. 99] the name of Morris Smith, who is a representative of the Atlanta Life Insurance Company, I asked him for names. He had given me some names himself, and he also had served on the jury himself many times. I asked a colored man by the name of Orran Campbell, an old barber, a high class person in Montgomery, a good man. I asked him for some names, but I am not certain that he gave us any names at all. I had asked him a number of times and each time he says he is going to try to get those names. I don't know how many other people I have contacted about getting names for the jury box, but I know I have talked to, I would say, fifteen or twenty colored people anyway. Maybe more than that. I don't know.

Q. As Clerk of the Jury Commission do you, in refilling this box and revising the roll, consult the registration list of this county, the voting list?

A. Oh, yes, very often.

Q. And also consult the Tax Assessor, the list out of the Tax Assessor's office?

A. Yes, sir.

Q. The City Directory?

A. The City Directory.

Q. Telephone directory?

A. Telephone directory. Anywhere we could get names.

Q. Have you and the other commissioners personally made trips out through the county in search of qualified jurors?

A. Yes, sir, many times in the past years.

Q. Have you likewise tried to get lists of members from various civic organizations; did you get in touch with any negroes—I don't know whether there are negro civic associations?

A. One was D. Caffey. I think he is president or at the head of the Elks organization here.

Q. And we don't have in Montgomery, to your knowledge, negroes Kiwanis organizations and Rotary Clubs, do we?

A. Not that I know of.

Q. There are a great many civic?

A. We asked them to get names as a rule of the people [fol. 100] that they know that are members of the colored race, and that is what they are doing. I couldn't go out and see them all myself because I don't know.

Q. There are a great many civic organizations in the City of Montgomery that have no counter-part in the negro population?

A. That is right.

Q. Do you know as a member of the Jury Commission of this county of any instances of discrimination against the negro by virtue of his race, creed or color?

A. Never have been. We have always been leaning over backwards trying to get names. If somebody walked in today with ten or twenty we would be glad to get them if they are all right men. We are not just going to dump any and everybody in the box. We don't dump every white man in the box. I don't mean we dump every and any colored man in the box. We want to know what we are doing.

Q. Has the present Jury Commission the right to exclude from the jury roll both white and negro people who are exempt under the law from jury service, in the judgment more or less of the Commission?

A. That is right.

Q. You don't contend in making up the jury list every male citizen is qualified to serve on the jury, white or colored, do you?

A. No. I know there are several hundred good people in this county whose names are not on it. I told you awhile ago we have done the best job we could. There has been no discrimination shown. I don't know how many people whose names we haven't got. We have done the best we could with it.

Q. Do you think you have discriminated against the negro race by leaving off more of their qualified citizens than you have left off white citizens?

A. No. We have them pretty well represented. We have done the best we could about it. We have a clear conscience about it anyway.

Q. I believe you said you are a native of Montgomery County and have been Clerk for many years. How long have you been here as Clerk?

A. Been twenty years as Clerk. I have spend forty-five years in the Court House altogether.

Q. You have during those forty-five years been pretty [fol. 101] familiar with Court procedure that has to do with criminal cases?

A. I came here when I was sixteen years old and I have been attending trials up here ever since.

Q. I will ask you, have you any opinion as to the percentage of defendants who appear in our criminal courts, who are negroes?

A. Do you mean what percentage of defendants in criminal court?

Q. That is right, are negroes?

A. About ninety per cent of them.

Q. Would you say the negro population of this county has a much higher percentage of criminal records than the white population of this county?

A. Well, the records will show that.

Q. From your experience and familiarity with both the white and the colored population of this county, have you any opinion as to the degree of education of white citizens as posed to our negro citizens, who is better educated?

A. Well, I think the white race is better educated.

Q. Which group has the highest degree of illiteracy?

A. I think the negro race has.

Q. Do we have a larger percentage of illiterate negroes in this county?

A. Always have been just like that. I do think they are better educated now than they were ten years ago. And ten years from now they may be better educated than they are now.

By the Court:

Q. Is that the only jury box in this county?

A. That is the only one.

Redirect examination.

By Lawyer Hall:

Q. I will ask you whether or not you have all of the cards from that roll in this box?

A. No, not all of them in there now, because every one—you might say practically everybody who served on the jury during the year 1954—that is last year—those names go out of the box and stay out for a period. On the first of January those names who served in 1954 would go back in. We have those cards downstairs, and they are not in this box, because we don't want to pull those names during [fol. 102] his present year. In other words, we try to make a gap in there of two or three years between the time a number serve on the jury.

Q. When you pull them out you don't put them back in?

A. We don't put them back in right away. All those cards will stay out for a year or more, and we have the cards downstairs in a separate package.

Q. There is one more matter I woud like to ask about, and that is with reference to the jury roll. There is nothing on the card there but the man's name, address, and a number, and nothing to show who they are?

A. The number on each card corresponds with the number on the roll, and we never could find them otherwise.

Q. Any way to tell those who are colored?

A. They are all the same.

Q. No differentiation at all?

A. None whatsoever. They are all the same. We have no pink card, or yellow card, or green card. They are all white.

Q. They have all numbers on them; is that right?

A. They have numbers on them. They have the same numbers as the numbers on the jury roll.

Q. Do they also contain his occupation?

A. Yes.

Q. Do you have the street address of his occupation?

A. Only his home, his occupation, his residence and his place of business.

Q. Is it possible for you most times to determine whether a man is colored or white by knowing where he lives and where he works?

A. Well, we don't know the names of all of them. Of course, it is possible to identify them more or less very well, for instance, South Hall Street, that is more or less a colored street. Take a person living on South Hall Street. I would think he would be a colored person. On the other hand, you pick out a name on Hull Street, you take him to be a white man.

Q. However, if you picked the name of a man who lives on South Hall Street, or a man who lives on South Hull [fol. 103] Street, you would know whether or not he is colored, wouldn't you?

A. I don't know. There might be some on North Hull Street, though. I don't know whether North Hull Street in Montgomery are white or black. I don't know. I don't go around that section out there.

Q. Is it possible to ascertain from the address and occupation to some degree?

A. The only way I would know, the only indication I would have it is a colored man, unless I knew him, would be his street address. I couldn't tell any other way.

Q. There is a compulsory school law in Montgomery County, isn't there?

A. Yes, sir.

Q. You call it the compulsory public school law?

A. You would have to ask the Department of Education about that. I don't know.

Q. Have we had that in the last ten years to your knowledge?

A. Yes, I think we have.

Q. Does that law affect white children as well as colored?

A. Affects everybody.

Q. We do have public schools in Montgomery County for negroes, don't we?

A. Yes.

Q. And under the law they are to go to the public schools, don't they?

A. Yes.

Q. For the last ten years they have always gone to the same schools?

A. I said they were getting better educated all the time. I said that. They are better educated now than they were ten years ago, and ten years from now and more they would be better educated.

Q. Is it necessary for a man to be educated to be a juror?

A. Not all the time, no. I think the vital thing is a juror be honest and straight. That is the main thing.

Q. I believe you mentioned the names of several persons from whom you obtained prospective jurors. Are you personally acquainted with the persons whose names you called?

A. Yes. I never would have sought them out if I hadn't known them.

Q. Do you know one of those men——

[Vol. 104] A. I know what you are going to say. One of those men was convicted of a felony? That is what you were going to say, wasn't it?

Q. Not necessarily.

A. I know you are leading up to it. I know what you are going to say. But his civil rights have been restored and he is a pretty good man. He is D. Caffey. You were going to mention it; you led up to it; I knew what you were going to say.

Q. No, sir. I wanted to ask you if you know him.

A. Yes, sure, I know him.

Q. I notice you have listed a retired mail man by occupation?

A. Yes.

Q. Is that an exempt category?

A. Yes, but they don't have to claim it.

Q. That would be true of school teachers too, wouldn't it?

A. That is right. But most of those school teachers were given to me by J. J. Pierce, who is head of the Society

for the Betterment of the Colored Race here in Montgomery. Some of those names came from him. They are teachers at the State Normal College, where he teaches himself.

Q. That is true.

A. That is where I got the names.

Q. If they are able?

A. That would not disqualify them, those that want to serve.

Q. We find several State teachers, college personnel, in the book.

A. That is what I told you. I told you I have gotten names from people on the jury who have come up to me and given me names, or I have asked them for names, and we never put any man on the jury unless we feel he is proper and right.

Q. If that is the case, you have skipped a number in the city and county of Montgomery?

A. I don't know. Maybe I haven't talked to people that know these colored people. I don't know.

Q. Have you ever gone to white people and asked them to give you a list of names of negro men?

A. Yes, plenty of times, any number of times.

Q. Have you gone to negroes for names of white persons also?

A. No, I haven't. I haven't gone to negroes to give [fol. 105] names of white people.

(No Cross Examination.)

CHARLES M. PINKSTON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall?

Q. State your name to the Court, please, sir.

A. Charles Pinkston.

Q. What is your profession?

A. A lawyer.

Q. Where is your office?

A. 32 South Perry Street.

Q. Montgomery, Alabama?

A. Yes.

Q. How long have you been practicing here?

A. Since 1937, May 23, 1937.

Q. Are you a native Alabamian?

A. Of Montgomery County.

Q. Do you have a general practice, criminal practice?

A. Up until the last two years. The last two years just been a minimum of criminal practice. I haven't much time.

Q. In the last two years you have been having criminal work?

A. Prior to two years ago.

Q. Have you ever had cases, tried cases before petit juries?

A. I have.

Q. Do you know whether or not negroes served on petit juries in Montgomery County?

A. I do.

Q. During the course of your practice have you known them to sit on any juries in Grand Jury or petit jury service?

A. Yes.

Q. In your best judgment tell us the largest number of negroes you have known to serve on a jury in this county?

A. I can tell you about my juries. I cannot be positive.

[fol. 106] Q. Yes, sir.

A. I remember at least one I tried where one sat. I remember one time in Police Court appeal cases where we don't strike so many negroes off.

Q. Have you been in Court when Grand Juries are empaneled?

A. I have never been in Court when the Grand Jury was charged by the Court, and never been before a Grand Jury.

Q. So you have no knowledge of the composition of a Grand Jury as a lawyer?

A. No, sir.

Cross-examination.

By Mr. Garrett:

Q. You don't know about the juries except the ones you tried cases before, do you?

A. That is all I testified to.

G. A. Mosley, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please, sir.
A. G. A. Mosley.
Q. What is your business?
A. Court Baliff now; I had been Sheriff.
Q. How long have you been Court Baliff?
A. Since January.
Q. Prior to that time what was your occupation?
A. Sheriff.
Q. Sheriff of Montgomery County?
A. Sixteen years.
Q. As Sheriff and Ba-liff you have been present on occasions when Grand Juries were charged by the Court in Montgomery County?
A. There practically ev y time.
Q. Do you recall any Grand Juries where negroes served in the past sixteen years?
[fol. 107] A. A good many of them.
Q. How many?
A. Two and three and four at a time.
Q. What is the largest number of negroes you have known to serve on a Grand Jury or on a petit jury?
A. Four.
Q. Do you recall that occasion?
A. About a year and a half ago, something like that. I don't remember which Grand Jury, but it had been in the last two years.
Q. Before that time had you ever known a Grand Jury with two or three or four negroes sitting on that Grand Jury?
A. Several Grand Juries with one, two and three negroes on them. I don't remember one with over four.
Q. When Sheriff was your duty to deliver subpoenas to prospective jurors?
A. Yes, sir.
Q. You testify you have served subpoenas on negroes summoned for Grand Juries?
A. Yes. I didn't do it myself, through my deputies.

Q. Have you seen negroes, in your capacity as Sheriff, try criminal cases; have you seen negroes serving on petit juries?

A. Yes.

Q. In this room?

A. Yes.

Q. And this county?

A. Yes.

Q. What is the largest number of negroes you have known to serve on a petit jury in this county?

A. Oh, the largest number—I think it has been about a year ago, or less than a year ago—had five on one jury.

Q. Five negroes on one jury?

A. I think it was five of them.

Q. Do you recall any other jury on which there was as many as three?

A. Last year, lots of them.

Q. In the last several years?

A. Yes, sir.

[fol. 108] Q. All right.

VAUGHAN HILL ROBISON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Please state your full name.

A. Vaughan Hill Robison.

Q. Profession?

A. Lawyer.

Q. You practice here in Montgomery?

A. Right.

Q. How long have you been practicing here?

A. Since 1938, except the time I was in the Service.

Q. Are you a native Alabamian?

A. Born and raised in Montgomery.

Q. And you are an active lawyer?

A. Yes.

Q. Have you any criminal practice?

A. I do criminal practice.

Q. You have occasions to appear before juries in criminal courts?

A. I do trial work.

Q. Will you tell us if you have tried cases before petit juries in your practice?

A. I have tried cases here before all juries.

Q. How many cases, in your best judgment?

A. I couldn't tell you the number of cases.

Q. Will you say it would be numerous or not be numerous?

A. I would say it has not been too numerous.

Q. Will you say that occasionally there have been negroes on petit juries?

A. I have tried cases in which negroes were serving as petit jurors.

Q. Will you tell us in your best judgment, what was the largest number of negroes serving on one jury at any one time?

A. I couldn't answer that question as to what is the [fol. 109] largest number serving on any one jury at any one time unless you want me to confine it to the juries that I have tried cases before.

Q. That is what I mean. I am sorry that I didn't put that in my question there. I mean within your own experience.

A. I would say that the maximum was probably two or three petit jurors on juries I have tried cases before.

By the Court:

Q. Are you speaking now of a jury or the venire?

A. I am speaking of the jury.

Q. The actual trial jury?

A. That is right.

By Lawyer Hall:

Q. Have you had occasion to be in Court when Grand Juries were charged in this Court?

A. Never have.

Q. You have no knowledge of the racial composition of any Grand Jury?

A. I don't know, no.

Cross-examination.

By the Assistant Solicitor:

Q. Let me ask you if you are, in addition to being a practicing attorney, a member of the State Senate; is that correct?

A. That is correct.

Q. You are presently State Senator from Montgomery County?

A. Yes, sir. Second term.

Q. And in connection with your private practice in the criminal Courts of this State, you have been questioned about the negroes that served on a jury.

Q. As I understand your testimony, you meant the jury as struck and put in the jury box?

A. The trial jury, the ones that are selected to try the case.

Q. I want to ask you about the venire from which those men were drawn. Can you tell me whether or not in the past five or six years negroes have appeared on the venires from which you struck your jurors?

A. That is correct.

Q. Will you say the number of negroes on the venires [fol. 110] has increased, decreased, or remained static during the last five years?

A. I would say they are on the incline.

Q. Beg pardon.

A. On the increase.

Q. Do you recall specifically the number of negroes on any one venire?

A. I do not.

Q. In the criminal courts your practice is largely defending criminal cases, isn't it?

A. I have never prosecuted a case.

Q. I want to ask you if in striking from the venire when defending a negro case, you are inclined to strike all negroes on the venire?

A. Not always.

Q. As a general rule do you do so?

A. I wouldn't say that I would strike him simply because he was a negro. I believe the last criminal case I tried was against you with a negro on the jury, and I won it.

Q. You have won a good many cases against me before a jury. From your experience as a practicing lawyer in this Court and observing our venires as they have been drawn over the years; have you found any evidence of discrimination against negroes as such?

A. I do not.

T. Bowen Hill, III, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please?

A. Bowen Hill.

Q. Your profession?

A. Attorney.

Q. Are you- offices here in Montgomery?

A. That is correct.

Q. How long have you practiced here?

A. Two years.

Q. Do you handle criminal work?

[fol. 111] A. Some.

Q. Have you had occasion to try cases before juries in this county in the last two years?

A. Criminal cases?

Q. Yes, sir.

A. I have tried one.

Q. On that occasion were there any negroes on that jury?

A. I believe there was.

Q. Do you remember how many?

A. I believe there was one.

Q. Have you had occasion during the past several years to be in Court when Grand Juries were being charged in this county?

A. I never have.

Q. Or organized?

A. I never have.

(No Cross Examination.)

WALTER J. KNABE, having been duly sworn, was examined and testified as follows:

Direct examination:

By Lawyer Hall:

Q. State your name, please, sir,
A. Walter Knabe.
Q. And your profession?
A. Lawyer.
Q. Your practice here in Montgomery, Alabama?
A. I do.
Q. How long have you been here?
A. I was admitted in 1927.
Q. Are you a native of Montgomery?
A. Yes. I was born in Montgomery.
Q. Do you handle criminal work as a lawyer?
A. I do not as a general rule. I take a case very, very occasionally, but almost never a criminal case.

Q. Have you had occasion to observe the composition of [fol. 112] petit juries in this circuit during the past several years?

A. Not in criminal work. I haven't had any criminal cases probably in three or four years in this Court. I had a criminal case, but in the Federal Court, not in this Court.

Q. Have you had occasion to be in Court when Grand Juries were being organized, when they were being instructed or charged?
A. No.

Cross-examination:

By Mr. Garrett:

Q. You have had considerable experience in civil trials?
A. I have tried a considerable number of civil cases.
Q. Do you find negroes on civil juries?
A. Yes, sir.

Lawyer Hall: We are going to object to asking about civil jurors. Our inquires have nothing to do with civil cases. The basis of our motion is that it is against the constitutional rights of defendants in criminal cases.

The Court: I appreciate that, but a jury is selected in various cases, civil and criminal, by drawing the names out of the box in the same way. I will overrule the objection and give you an exception.

Lawyer Hall: We ask for an exception.

(Exception noted for the defendant by direction of the Court.)

By Mr. Garrett:

Q. Was that true in civil cases regularly?

A. Yes, sir, always in civil cases.

Q. I believe in the last term of civil court we had two negroes or better.

A. I believe I counted more. They always appear on civil venires.

Q. You have tried civil cases repeatedly with negroes no many trial juries trying cases?

A. It would be my opinion there are more negroes on juries here in this Court than I have found in Federal Court.

Q. More negroes on juries in this Court than in Federal Court?

A. That would be my opinion; that is correct.

[fol. 113] Redirect examination:

By Lawyer Hall:

Q. Will you tell us the largest number of negroes serving on any jury you have knowledge of?

A. I think the largest number ever serving on a petit jury where they were trying the case was not more than three.

John Blue Hill, having been duly sworn, was examined and testified as follows:

Direct examination:

By Lawyer Hall:

Q. Will you state your name, please, sir?

A. John Blue Hill.

Q. Your profession, please, sir?
A. Lawyer.
Q. And you practice where?
A. 111 Washington Avenue, Montgomery.
Q. How long have you practiced your profession?
A. Thirty-five years.
Q. Are you a native of Montgomery?
A. Born and raised right here.
Q. Do you handle criminal work?
A. Yes, criminal and civil.
Q. You have tried criminal cases in the Montgomery County Circuit Court?
A. Quite a number of cases.
Q. During that time have you observed negroes serving on your petit juries?
A. Yes, I have, in the last few years.
Q. Can you tell us the largest number of negroes you recall serving on a jury before which you tried a case?
A. That were left there?
Q. Yes, sir.
A. Well, I remember distinctly I had as many as two actually serving. I have seen more than that on the list. [fol. 114] Q. Have you any judgment of the number who were not on the jury, members who were not trying a case?
A. No, I don't. What I mean to say, I have seen more than that on the panel. I have seen to my knowledge as many as three, and possibly might have been four. I know of three. I have seen three on the panel, but I have never tried a case with two on the jury, but several with one, criminal cases as well as civil cases.
Q. You have a large criminal practice?
A. I wouldn't say large. I have a criminal practice, yes. I represent some criminal cases.

Cross-examination.

By Mr. Garrett:

Q. In your practice have you ever had a criminal case where you were representing a white criminal in a capital suit and had a negro serving on the jury trying that man?
A. I distinctly remember one.
Q. How long ago has that been?

A. That is about—I can tell you the name of the defendant, Mosby Tate, tried for murder, first degree murder, for killing his brother, one of the last cases Mr. Seibels prosecuted. I remember on that jury was one, and they rendered a verdict and found him guilty of murder in the second degree and gave him ten years. The man who served on that jury was Campbell, ran a cafe in town. I distinctly remember that one.

Q. You have tried a number of cases since that, haven't you, with some on the jury?

A. I remember one in the past year. I remember a case I tried for a man named Harrow, who was a white man, and charged with grand larceny. My friend over there prosecuted the case. I had a very reasonable fee, less than I usually charge, but it was plenty. If I remember right, Professor Pierce was on the jury. The record will bear me out. I remember that case very well. I was a little more successful with that than I was with the other one.

By the Court:

Q. You rather talk about that one?

[fol. 115] A. I rather talk about that one than the ten year one anyhow.

Redirect examination.

By Lawyer Hall:

Q. Have you been present in Court when Grand Juries were being organized or being charged?

A. I have been in Court when Grand Juries were being called. I have seen them drawn, and I have seen them charged. I didn't pay any attention to whether they were white or colored, but I have been in the court room when they have been drawn and when they have been charged by the Court.

Q. Have you known of any Grand Jury which included negroes?

A. Yes, I have. I remember very distinctly the case of Dr. Adair, whom I represented, who was charged with murder, charged with killing his wife, a colored doctor here. You probably know him. My recollection is on that Grand Jury there was one or two negroes. I remember

the case very well because Dr. Adair wasn't indicted, he never was indicted, and hasn't been indicted to this day. I want to say this. I understand that Grand Jury was unanimous in No Billing it. That information also came from my friend over there.

Q. Do you remember any occasion where more than one or two negroes served on any Grand Jury in Montgomery County during the years of your practice here?

A. Served on Grand Juries?

Q. Yes, sir.

A. I don't recall exactly. I wouldn't want to testify to that. I have known of one, and possibly might have been two. I don't believe I could give you the name of one that ever served on any Grand Jury.

Q. You are sure it wasn't over two?

A. I don't recall any instance where more than two served on a Grand Jury. But I want to say this. I don't keep up with the organization and drawing of Grand Juries. I cannot testify there haven't been more than two. I will state I don't recall then, but could possibly have been more, but I don't recall any more than that.

[fol. 116] JAMES T. STOVALL, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please, sir.
A. James T. Stovall.
Q. Your profession?
A. Attorney.
Q. Practice here in Montgomery?
A. Right.
Q. How long have you practiced here?
A. Since 1942.
Q. Are you a native Montgomerian?
A. Yes.
Q. Do you handle any criminal work?
A. None whatever.
Q. Mostly civil?
A. Yes.

Q. In handling your civil practice have you occasion to try cases before juries?

A. I am not a trial lawyer. All I do is title work and civil, no trial work.

Q. Have you ever been present in Court on occasions like when Grand Juries are drawn up and organized or charged?

A. No, I have not.

JOHN A. GODBOLD, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please, sir.

A. John A. Godbold.

Q. Your occupation?

A. Attorney.

Q. Is your office here in Montgomery?

[fol. 117] A. Here in Montgomery, Professional Center Building.

Q. How long have you been practicing here?

A. Seven years.

Q. Do you handle any criminal work?

A. A very small volume of criminal work.

Q. Have you had occasion to try cases in the civil courts before juries?

A. Yes.

Q. In your experience have you observed negroes serving on petit juries in this county?

A. From time to time.

Q. Will you tell us the largest number of negroes you have observed on any one jury at any one time?

A. Do you mean on the jury or on the panel?

Q. The jury, actually serving on the jury.

A. I don't think I have observed more than two.

Q. Have you observed the organization and the charging of the Grand Jury in this Circuit from time to time?

A. No.

(No Cross examination)

MAC SIM BUTLER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please, sir?
A. M. S. Butler.
Q. State your occupation.
A. Sheriff of Montgomery County.
Q. How long have you been Sheriff of Montgomery County?
A. January 18, 1955.
Q. Before that time what profession did you follow?
A. Bailiff, Circuit Court of Montgomery County.
Q. How long were you Bailiff?
A. About seven years.
[fol. 118] Q. As Bailiff and Sheriff have you had occasion to observe the composition of juries in the various courts?
A. Yes.
Q. Of this county from time to time?
A. That is my occupation.
Q. Have you noticed any negroes serving on said juries?
A. I have.
Q. Will you tell us the largest number you have seen serving at any one time?
A. Five on one jury panel, in the box, five out of twelve.
Q. Five persons that served in the box?
A. That is five negroes out of twelve serving in the box.
Q. How many times did you see at least five persons on a jury, or five persons of negro extraction?
A. I know of two occasions. I couldn't name them. On several occasions I have known as high as three out of twelve.
Q. At least two with five out of twelve?
A. At least two with five colored jurors in the box, five out of twelve, and numerous times as many as three.
Q. In your best judgment how long has it been since you have seen as many as five negroes in the box?
A. I couldn't say the specific time.

Q. You have no judgment whether it was two, three or four years ago?

A. No. I would say about four years ago.

Q. Since then what is the largest number you have seen on any one jury at any one time?

A. I would say around three.

Q. Is it a usual thing for negroes to serve on petit juries, or is it unusual?

A. Since I became Bailiff in 1948 it has been the usual procedure to see negroes on juries in Montgomery County.

Q. Would you say that negroes are on the average jury in this Circuit?

A. I would.

Q. At least one or two?

A. I would say more than that.

Q. At least how many would you say?

[fol. 119] A. I would say in the period when I was Bailiff, on the criminal and civil juries as many as six and more.

Q. Six all serving?

A. I wouldn't say six would serve, no.

Q. We are speaking of people serving on juries, not people called to serve.

A. On many occasions I have seen as high as one, two and three sitting in the box as struck to try a case.

Q. You are saying it is usual to have negroes on said juries?

A. Very usual.

Q. Not unusual?

A. Not unusual.

Q. Are you required to be in the Court Room when the Court organizes the Grand Juries?

A. I am.

Q. When the Judge charges the Grand Juries after organization?

A. I am.

Q. Will you tell us whether or not you noticed any negroes serving on Grand Juries in Montgomery County, either on the panel or in the box?

A. I couldn't name any specific Grand Jury, but colored persons serve, to my knowledge, frequently as Grand Jurors. I can definitely remember one out of eighteen

men serving as Grand Jurors. And I might have seen two out of eighteen, but I cannot remember the specific Grand Jury, but they were on the Grand Jury.

Q. Do you recall how many of the eighteen were negroes, two or more?

A. Since I was Bailiff for a period of seven years I don't believe I have seen more than three on any Grand Jury out of eighteen.

Q. Three on a Grand Jury out of eighteen?

A. That is right.

Q. How many times have you seen at least three on such a Grand Jury?

A. I couldn't say how many times. The Grand Jury meets four times a year. I couldn't say how many occasions I have seen as many as three on the Grand Jury.

Q. You have seen as many as three on a Grand Jury?

A. Yes.

Q. On many occasions?

[fol. 120] A. On several occasions.

Q. On several occasions?

A. That is right.

Q. You wouldn't say how many?

A. I said several.

Cross-examination.

By the Assistant Solicitor:

Q. How long have you been Sheriff or Bailiff?

A. About seven and one half years.

Q. Would you say during that period of seven and one half years there had been negroes on those juries, the jury venire drawn in this Court, the percentage of negroes has increased in that time?

A. I believe it has increased some.

Q. Did you have charge of the last Grand Jury last year, November?

A. Yes, sir.

Q. The July Grand Jury also?

A. Yes, sir.

Q. Were there three negroes serving on that Grand Jury?

A. There were.

Q. In answering the question about those negroes, one or two jurors sitting on a jury, were you referring to the jury as those twelve men struck and sitting in the jury box?

A. Yes, sir.

Q. You were not referring to the venire?

A. No, sir. Twelve struck to try a particular case.

Q. Would you say it is customary and usual to have negroes on the venire most every time in this Court?

A. Usual, most every time.

Redirect examination.

By Lawyer Hall:

Q. When counsel refers to the venire, what does he mean?

A. I don't know what he means, but I can give you a definition of it in my own way.

Q. Will you do that?

A. A venire is a certain number of jurors summoned which the attorneys strike from to get twelve to try a case.

[fol. 121] Q. How many jurors are usually drawn?

A. I don't know exactly, but I do know it is usually fifty for civil and criminal cases, and for capital cases there is always fifty special jurors drawn.

Q. On those venires you have seen negroes on, what is the largest number you have seen on a criminal venire, do you recall?

A. No, I don't recall, because there are so many colored around different places it is hard to spot them on the jury panel.

Q. You have seen some?

A. I have seen some on each venire and special venires different times.

Q. The list of fifty persons, you have seen several negroes on them?

A. Any number of times I have, yes.

WILLIE FRANK ALFORD, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please.
A. Reverend Willie Frank Alford.
Q. What is your occupation?
A. Minister.
Q. What is your church?
A. Beulah Baptist.
Q. Here in Montgomery, Alabama?
A. Yes, sir.
Q. How long have you been pastor here?
A. Three years.
Q. Are you a native Alabamian?
A. I am.
Q. Are you a native of Montgomery?
A. No. I came from Covington County here.
Q. You have lived here three years?
A. Yes.
[fol. 122] Q. During that period of time have you ever had occasion to serve on a jury here in Montgomery County?
A. No, sir.
Q. Have you ever been summoned for jury service here in Montgomery County?
A. No.
Q. Tell me, are you over the age of twenty-one?
A. Yes.
Q. You read and write?
A. Yes.
Q. Are you suffering from any disabling disease?
A. No.
Q. Have you gone to the Jury Commission and told them you wanted to claim exemption?
A. No.
Q. And you have never served on any jury here in Montgomery County?
A. No.
Q. During the time you have lived here?
A. No.

Q. Are you colored or white?
A. Colored.

Cross-examination.

By Mr. Garrett:

Q. How long have you been in Montgomery?
A. Three years.
Q. During all that time you have been a minister here?
A. Yes, sir.
Q. And came here from Covington County?
A. That is my native county, Covington County.
Q. Have you ever made any attempt to get on the jury roll any time?
A. No.
Q. Nobody has been to you one way or the other?
A. No.
Q. Are you a member of the National Association for the Advancement of Colored People?
A. Yes.
[fol. 123] Q. Have there been any meetings in your church relative to this case?
A. No.
Q. Been any contributions taken in your church relative to this case?

Lawyer Hall: We are going to object to this question, and set out as grounds for the objection it is irrelevant, immaterial and incompetent and proves nothing.
Mr. Garrett: Shows the interest of the witness.
The Court: For that limited purpose, yes. I believe we are getting pretty far afield and I am going to sustain the objection.

Redirect examination.

By Lawyer Hall:

Q. Do you have a ministerial alliance here?
A. Yes, sir.
Q. Do you know if such ministerial alliance has been approached by the Jury Commission of Montgomery County,

anybody on behalf of the Jury Commission of Montgomery County, with reference to getting names for the jury?

A. No.

Q. Do you belong to any fraternal organizations?

A. Yes.

Q. What fraternal organizations?

A. Masons.

Q. You tell us the Masonic Order here in Montgomery?

A. Yes.

Q. Do you know whether that organization has been approached by the Jury Commission or anybody else for the purpose of getting qualified negroes for jury duty?

The Solicitor: We object to that as hearsay.

The Court: You asked him if he knows of his own knowledge and he says he doesn't know. I will let it in for what it is worth.

By Lawyer Hall:

Q. Do you belong any organization or clubs?

A. Yes.

Q. What clubs do you belong to in the vicinity of Montgomery?

[fol. 124] A. Our ministerial club.

Q. Is it a civic or social organization?

A. Well, it is a religious organization, but we do take part in some of the civic organizations.

Q. Do you know any occasion when anyone, the jury commission, or anyone on behalf of the jury commission, approached that organization?

A. No.

Q. For the purpose of getting qualified negroes to serve on juries?

A. No, sir.

Q. Has anyone approached you as minister of the church for the purpose of getting names of qualified persons to serve as jurors in this county?

A. No.

WINSTON CRAIG, having been duly sworn was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name to the Court, please, sir.
A. Winston Craig.
Q. Your address?
A. 2615 Rutland Street, Montgomery.
Q. Your occupation?
A. Chauffeur.
Q. I believe you are a native of Montgomery County?
A. Native of Dallas County.
Q. But you live now in Montgomery?
A. Yes, sir.
Q. How long have you lived here?
A. Seventeen years.
Q. Are you a voter here in this county?
A. I am.
Q. Have you ever served on the jury in this county?
A. No, I haven't.
Q. Never served on a jury in Montgomery County?
[fol. 125] A. No, sir. I have been called but never served.
Q. You have been on the venire but never served actually as a juror?
A. Right.
Q. And you have been called?
A. Yes.
Q. What were you called for, the petit, or trial jury, or would it be the Grand Jury?
A. Petit trial jury.
Q. Have you ever been called for Grand Jury service?
A. No, I haven't.
Q. How many times have you been called for petit jury service?
A. Once
Q. Once in a seventeen year period?
A. Right.
Q. Did you go to the Court House on that occasion, or were you excused for that?
A. I went to the Court House.

Q. How many negroes did you see on the venire at the same time you were?

A. I was the only one.

Q. You were the only one?

A. Yes, sir.

Q. There were no other negroes?

A. No.

Q. I believe you listed your occupation as chauffeur?

A. As State employee, chauffeur.

Q. As a matter of fact, you are the governor's chauffeur, are you not?

A. That is right.

Q. Do you know how many negroes there are in Montgomery County?

A. Quite a few.

Q. Do you know many of them?

A. Yes, sir.

Q. Do you know them by name and address?

A. Yes.

[fol. 126] Q. I show you this book marked Defendant's Exhibit 4, which purports to be a jury roll of Montgomery County, Alabama, and ask you to take it and open it.

The Assistant Solicitor: We object to that.

Lawyer Hall: You haven't heard my question.

By Lawyer Hall:

Q. Look through it and tell me how many of those persons you can identify.

Mr. Garrett: This is not for public use at all. We object to it on the basis it is not a public document and not to be used in that manner. This is an unauthorized use of it.

The Assistant Solicitor: And on the further ground, any statement of negroes known by this witness proves nothing.

The Court: The objection is sustained, and an exception is granted the defendant.

Lawyer Hall: Our motion is names of negroes are arbitrarily and systematically excluded from the jury list or jury roll; that a great majority are kept out of the jury box. We feel the introduction of this document at this time is a very vital part of this case. We feel the introduction of the jury box with the document is very impor-

tant to this case. The allegations of this petition go to the constitutionality of the make up of your jury system right here in Montgomery County. We are alleging this defendant who is being tried before this Honorable Court is being denied due process or protection of the law because of arbitrary discrimination by the jury commission of this county.

The Court: I have already sustained the objection and granted an exception to the defendant.

Lawyer Hall: We would like to take exception to Your Honor's ruling on the further grounds, that the defendant alleges he is being discriminated against, and has been from the time of his arrest, from his indictment and long before this trial, because of the fact that he is a negro, and all negroes are systematically and arbitrarily excluded from service as jurors in this Circuit and in this county, simply and solely because they are negroes. If Your Honor [fol. 127] please, in support of this motion that we have asked the Jury Commission of this county to come into this Court with these records, this jury roll, and testify in this Court. They have produced here the jury roll. We have before us on the stand a competent witness who has a wide acquaintance in Montgomery County with negroes. We allege that very few of any of the names in this book are negro, and this defendant says he has a right to consult it to determine whether any are negroes.

The Court: The Court has already ruled, and the Court adheres to its previous ruling, and you are granted an exception.

Lawyer Hall: We take an exception based on the denial of due process and equal protection of the law.

Cross-examination.

By the Assistant Solicitor:

Q. You are chauffeur for the present governor, and have been for some time chauffeur for the preceding governors; is that correct?

A. Yes, for five of them.

Q. You live in Montgomery County, did you say?

A. Yes, sir. I have lived in Montgomery County for

Q. Has that been your only occupation during the time you have been here, chauffeur to one governor after another.

A. Definitely so.

Q. Are you a member of the National Association for the Advancement of Colored People?

A. Yes, I am.

Lawyer Hall: We object to that question as irrelevant, immaterial and incompetent.

The Assistant Solicitor: It has already been answered. We will stipulate they all are.

William L. Brannon, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Billingsley:

Q. State your name to the Court, please.

[fol. 128] A. William L. Brannon.

Q. Are you a citizen of Montgomery County, Alabama?

A. I am.

Q. How long have you lived in Montgomery County, Alabama?

A. Since May 6, 1905.

Q. I will ask you whether or not you have served on a petit jury in this county?

A. I have never served on the jury.

Q. Have you ever been called for petit jury, to serve on the petit jury?

A. No, I have never been called.

Q. Have you ever been called to serve on the Grand Jury?

A. I have never been called to serve on the Grand Jury in this county.

Q. I will ask you further, whether or not you have been convicted of a crime involving moral turpitude?

A. I have not.

Mr. Garrett: We raise the objection that the question whether he was on the jury, or not, is not consistent with the motion. If he is going to put it on that basis we are going to object, because one, or two, or three, or twenty people, haven't been on the jury isn't indictive of discrimination alleged in this motion.

The Court: I am going to allow the defense counsel very wide latitude in this type of questioning and I will allow you as much latitude as the defendant.

By Lawyer Billingsley:

Q. Have you ever been afflicted with a permanent disease or physical weakness which would make it impossible for you to serve a juror in this county?

A. I have not.

Q. Can you read?

A. I can.

Q. I will ask you whether or not you have known of any negro citizens, male citizens, serving on the juries of this county?

A. I would say back some years—naturally I recall it well—no one was even drawed for service.

[fol. 129] Q. No one?

A. No, sir.

Q. How many years ago?

A. I am sure twenty, twenty-five years ago.

Q. Have you personal knowledge or know of any negro serving on juries since that time?

A. I have no such knowledge.

Q. What is your occupation?

A. I am Recreation Director for the City of Montgomery.

Q. How long have you worked for the City of Montgomery?

A. Since June, 1951.

Q. Are you married?

A. No, I am single.

Q. Have you any brothers or sisters over the age of twenty-one?

A. Yes, sir, I have a brother who lives out of the city.

Q. You haven't any brother who lives inside of the city?

A. No.

Q. Do you own your own home?
A. I have an interest in the home.
Q. Do you own any property?
A. The same property, only the home property.

Cross-examination:

By Mr. Garrett:

Q. You say you have lived in Montgomery since 1905?
A. Yes.
Q. Do you know John A. Blair who lives on Tuttle Street?
A. I do.
Q. Do you see him up here today?
A. I believe he is here today.
Q. Is he serving on the jury today?
A. He is a witness today. Is he on the jury?
Q. Yes.
A. I believe he is, but he is not serving.

By the Court:

Q. Is he a colored man?
A. Yes, sir.

[fol. 130] By Mr. Garrett:

Q. Do you know Issac Hathaway?
A. Yes, sir.
Q. Is he a juror too?
A. Yes, sir.
Q. Is he a colored man?
A. Yes, sir.
Q. Is he serving on the jury?
A. I believe he is out of the State. I don't believe he was present this morning, Hathaway wasn't.
Q. Did you hear his name called this morning as a juror?
A. I did.
Q. Do you know the colored jurors on the venire here this morning?
A. I do personally.
Q. Did you say awhile ago you never knew of any negro serving on the jury except on this panel?
A. I said no one but Hathaway. I have that personal knowledge because I heard his name called.

Q. What was that?

A. I have that personal knowledge because I heard his name called out..

Q. He is the only man that you have personal knowledge of serving on the jury?

A. Yes, sir.

Q. You were talking about prior to this morning, you were not talking about this morning?

A. I was talking about previous to this.

Lawyer Billingsley: We object to any questions about anyone present here today. Saying this witness knows whether they are serving on the jury would be a conclusion, the witness has no way of knowing.

The Court: He has the right to Cross Examine as to his knowledge. He said as far as he knows, no negroes have been called for jury duty to his knowledge. He has a right inquire into the basis for that statement. The Court isn't going to be mislead, by any questions, or anything of that kind that he asks him about it.

[fol. 131] By Mr. Garrett:

Q. You are personally acquainted with many colored people in Montgomery?

A. Fairly so.

Q. And during the years you have been here since 1905, you have never heard of or seen any colored man serve on a jury until this morning?

A. I believe that is correct.

Q. I will ask you this: Are you a member of the NAACP?

A. I am not.

Richard S. Jordan, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Billingsley:

Q. Will you state your name?

A. Richard S. Jordan.

Q. Where do you reside?

A. 872 East Grove Street.

Q. Are you a resident citizen of Montgomery County, Alabama?

A. I am.

Q. How long have you lived in Montgomery County, Alabama?

A. All of my life.

Q. How old are you?

A. Forty-seven.

Q. You are forty-seven years of age?

A. Forty-seven.

Q. Do you own your own home?

A. Yes, I do.

Q. You own your home?

A. Yes, sir.

Q. I ask you whether or not you are an habitual drunkard, are you an habitual drunkard?

A. I don't drink.

Q. Have you ever been convicted of any crime involving moral turpitude?

A. Never in my life.

[fol. 132] Q. Can you read the English language?

A. I think so.

Q. I will ask your whether or not you have been summoned as a juror in this county during your life time?

A. No, I haven't.

Q. You say you haven't been summoned?

A. No, never.

Q. Never called as a juror in this county during your life time?

A. No, I haven't.

Q. Do you know all the negroes, many of the negroes who live here?

A. Yes, I do.

Q. Do you know any negro who has been summoned for jury duty in this county?

A. Well, if I remember right, I can remember one or two of them.

Q. You remember one or two negroes who have?

A. Upon what jury? You say serve on the jury?

Q. I am asking about those who have been summoned. Sometimes they are summoned and never get a chance to serve because their names are struck from the venire.

Mr. Garrett: We object to that.

The Court: Objection sustained.

Lawyer Billingsley: I will withdraw it.

The Court: What he means to say, sometimes jurors are summoned, and after they are summoned sometimes lawyers don't select to serve on a particular jury.

By Lawyer Billingsley:

Q. Have you known during your lifetime any negro who has served on a jury in this county, or a jury?

A. Have served?

Q. Yes.

A. Only one or two.

Q. You know of one or two?

A. Yes, sir.

Q. Do you know them by name?

A. I don't recall them now. If I heard them again I possibly would.

[fol. 133] Q. But you don't know anymore than that?

A. No.

The Assistant Solicitor: We object to the leading question.

Cross-examination.

By Mr. Garrett:

Q. In your experience there have been but one or two negroes serving on juries in Montgomery County; is that your statement?

A. That is my statement.

Q. Have you ever attempted to inquire whether negroes do serve on juries, or not?

A. No, I haven't.

Q. Ever made any inquiries of anybody to see whether people knew?

A. No.

Q. You just never have seen anybody serve?

A. Oh, no.

Q. You have no knowledge of any except one or two names?

A. I read the paper once in a while when they have a jury case, and that is the only time I see them, by reading the names in the paper.

Q. Never have discussed it with any group, or anything like that; just happened to pick up the paper and see the names in the paper?

A. Seen they served on a jury.

Q. Those particular names were familiar to you?

A. None of them, if I remember right.

Q. What did you say you do?

A. Pullman porter.

Q. Have you ever attempted to get on the jury yourself?

Lawyer Billingsley: We are going to object to that.

The Court: Overrule your objection. This is Cross Examination.

By Mr. Garrett:

Q. Have you ever attempted to get on the jury?

A. No, I haven't.

Q. You travel a great deal as a Pullman porter?

A. Every State in the United States.

Q. Really, you are not in Montgomery very much of the time, are you?

[fol. 134] A. I am here enough to be on the jury.

Lawyer Billingsley: We object to the question as irrelevant, incompetent and immaterial.

The Court: This is Cross examination. He has a right to ask that on Cross Examination.

By Mr. Garrett:

Q. You travel in every State of the Union?

A. I have been in every State in the United States.

Q. What railroad do you work for particularly?

A. The Pullman Company operates on all lines in the United States.

Q. Where do you go when you leave Montgomery?

A. Anywhere they send me.

Q. You are not in Montgomery very much of the time?

A. I have been here the past three months because they have been out on strike and haven't been called back to duty yet.

Q. Is there any way when there is no strike how often you are away in a week or a month?

A. No. Depends on how much work I get.

Q. When you are working how long are you out of town before you get home?

A. If I am on a regular run I am out of town four days a week.

Q. Are you a member of the National Association for the Advancement of Colored People?

A. I am.

Lawyer Billingsley: They say they are willing to stipulate about their being members of the National Association for the Advancement of Colored People. We don't see what it has to do with this matter, whether they are or are not.

The Court: I think they have a right to ask that.

The Assistant Solicitor: Do you stipulate that all witnesses are members of the National Association for the Advancement of Colored People? If so, we will refrain from asking that.

Lawyer Billingsley: We think it is irrelevant and immaterial.

The Assistant Solicitor: We are willing to stipulate, if you are, that all witnesses are members of the National [fol. 135] Association for the Advancement of Colored People.

Lawyer Billingsley: No, I am not.

Frank N. Lowe, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Billingsley:

Q. Will you state your name to the Court, please?

A. Reverend Frank N. Lowe.

Q. What is your address?

A. 1118 Hutchinson Street, City.

Q. Are you a resident of Montgomery County, Alabama?

A. I am.

Q. How long have you been a resident of this county?
A. All of my life.
Q. How old are you?
A. Forty nine.
Q. You are forty-nine years of age?
A. Yes, sir.
Q. Have you any other profession or occupation other than a minister?
A. Special letter carrier.
Q. How long have you been engaged in such occupation?
A. Twenty nine years.
Q. I will ask you whether you are a member of the National Association for the Advancement of Colored People, or not?
A. I am.
Q. I will ask you whether or not you own your home here in this county?
A. Yes, sir.
Q. Do you own other property also?
A. No.
Q. Are you afflicted with any permanent disease or physical weakness?
A. None.
Q. Can you read or write the English language?
A. Yes, sir.
[fol. 136] Q. Have you ever been convicted of a crime involving moral turpitude?
A. No, sir.
Q. I will ask you further, whether or not you have been summoned as a juror during your life time in this county?
A. I have not.
Q. And you, therefore, have never served on a jury in this county?
A. No, sir.
Q. Have you any brothers over the age of twenty-one?
A. I have one.
Q. One?
A. Yes, sir.
Q. Is he a resident citizen of this county?
A. Yes, sir.
Q. What is his age?
A. Approximately fifty two.

Q. Has he ever been convicted of any crime involving moral turpitude?

A. No.

Q. Any physical weakness or permanent disease?

A. No.

Q. Does he own his own home?

A. He does.

Q. Do you know whether or not he has been summoned for jury service in this county?

A. Not to my knowledge.

Q. Therefore, he hasn't served on any jury, any petit jury in this county?

A. That is true.

Cross-examination.

By Mr. Garrett:

Q. You don't tell us the only people you want to see on the jury roll are members of the colored race, do you?

A. I beg your pardon.

Q. Do you say you just never want to see white people serving on on the jury?

A. I don't say that.

Q. You would be better satisfied then to have everybody serve?

[fol. 137] A. Yes, sir.

Q. That is the gist of your testimony?

A. Yes, sir.

Warren G. Brown, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Billingsley:

Q. Will you state your name to the Court, and your addess?

A. Warren G. Brown.

Q. What is your address?

A. 1122 Hutchinson.

Q. Are you a resident citizen of Montgomery County, Alabama?

A. I am.

Q. How long have you been a resident citizen of this county?

A. All my life.

Q. How old are you?

A. Thirty three.

Q. You are a member of the colored race, aren't you?

A. I am.

Q. Can you read and write the English language?

A. I can.

Q. Do you own your own home?

A. No.

Q. Own any property?

A. No.

Q. Where do you work?

A. College Hill Barber Shop.

Q. Are you the owner of that business?

A. I am.

Q. Have you ever been afflicted with any permanent disease or physical weakness?

A. Not as I know of.

Q. Have you ever been convicted of a criminal offense for which you have served time in the penitentiary?

[fol. 138] A. I have not.

Q. I will ask you whether or not you have ever been summoned as a juror in this county?

A. I have not.

Q. Never been summoned as a juror?

A. No, sir.

Q. And, therefore, never served on a jury in this county?

A. I have not.

Q. Do you have any brothers over the age of twenty-one?

A. One.

Q. Is he a resident citizen of this county?

A. He is not here at present.

Q. Have you a father in this county?

A. My father is dead.

Q. Your father has passed away?

A. Yes, sir.

Q. Do you know of any negroes who have served on any jury in this county of your own personal knowledge?

A. I don't personally know of any one.

Q. Have you ever heard of any negroes serving on juries?

The Assistant Solicitor: We object to that as hearsay.

The Court: Objection sustained.

Lawyer Billingsley: I withdraw that question.

By Lawyer Billingsley:

Q. I believe you stated to the Court your occupation. You are a barber?

A. I am.

Q. Do you have a wide acquaintance among the negroes of this county?

A. I think so.

Q. I show you this book, which is the jury roll of Montgomery County, Alabama, and is marked Defendant's Exhibit 4. This purports to be the jury roll, present jury roll for Montgomery County. I ask you to take this book and observe it, and I want you to go through——

The Assistant Solicitor: We object to the examination of that book or read from that same jury roll.

The Court: We better wait to see what the question is.

[fol. 139] By Lawyer Billingsley:

Q. I want you to take that book and check name by name, go through it and point out the names therein of such persons you know to be negroes.

The Solicitor: I would like to object to that use being made of the Montgomery County jury roll on the ground it is being examined by person not authorized to examine it under the statute.

The Assistant Solicitor: And on the further ground the testimony would not be material or conclusive under the motion made by the defendant.

The Court: I ruled upon the same question during the examination of the witness Craig. The Court sustains the objection, and you are allowed to assign the identical grounds you made for Craig herein, and an exception is granted, unless you wish to add additional grounds that you may have.

Lawyer Billingsley: We would like to get the various people whose names are on the jury roll. We set that up as one of the allegations of our motion to quash the venire.

The Court: I am going to give you the same grounds you gave when Craig was on the stand, unless you want to add additional grounds, you can.

Lawyer Billingsley: We think the jury roll is an important part of the evidence in the case. We believe it is a public document. On such a question we think the Court could certainly authorize this witness to examine that book. It certainly falls within the purview of this Honorable Court to do that.

The Court: I have sustained the objection, and you have the same grounds, and an exception, and have the privilege of assigning any others.

Lawyers Billingsley: We take an exception to the ruling of the Court.

The Court: Very well.

Cross-examination.

By the Assistant Solicitor:

Q. What is the address of the place you live?

[fol. 140] A. 1122 Hutchinson.

Q. Do you know Roscoe A. Williams who lives at 1219 Hutchinson Street?

A. Yes, I know him.

Q. Have you seen him here today?

A. I have.

Q. He is here as a member of the jury panel today, called here to serve on the jury today, isn't he?

A. Well, there is a lot of people here.

Q. Were you in Court this morning when the jurors were called?

A. I was.

Q. Did you see Roscoe A. Williams come up before that Bar with a number of jurors?

A. I didn't pay particular attention. I didn't say anything to him. I was in here, and I know he was here.

Q. In other words, you were in Court during the calling of the jurors and you cannot state whether Roscoe A. Williams was called up as a juror?

A. I cannot say because I wasn't particularly looking at him.

Q. Roscoe A. Williams is a colored man and a neighbor of yours?

A. At one time he was. He don't live there any more.

Q. He did live on Hutchinson Street?

A. Yes.

Q. Do you know Walter Nesbitt?

A. Yes, sir, I know him.

Q. Did you see him called up before the Bar this morning as a member of this jury?

A. I don't recall seeing Walter Nesbitt.

Q. He is a colored man, isn't he?

A. Yes, he is.

Q. Did you see him this morning here in Court?

A. I don't recall seeing him.

Q. Do you know F. L. Lowe, manager of Smith and Gaston Funeral Home?

A. I wouldn't say I am so familiar with his name. I probably know him.

Q. Did you see F. L. Lowe here this morning?

A. I cannot say specifically whether I seen him, or not.

[fol. 141] Q. You were not in the Court Room when the jury was called?

A. I was here this morning.

Q. Do you know James E. Lott?

A. I know James E. Lott.

Q. Did you see him this morning?

A. Yes, sir.

Q. He is a colored man?

A. Yes, sir.

Q. Did you see him called before the Bar with the other jurors?

A. I saw him.

Q. You saw him called up before the Bar with the other jurors?

A. Yes.

Q. You know he is one of the jurors here today, don't you?

A. Today?

Q. Today.

A. Today.

Q. Do you know John A. Blair?
A. I know John Blair. I know him.
Q. Is he a colored man?
A. Yes, sir.
Q. Did you see him here today?
A. I did.
Q. Did you see him called up before the Bar along with the other jurors as one of the jurors?

By the Court:

Q. Answer yes or no.
A. I don't recall some of them.

By the Assistant Solicitor:

Q. Did you see Isaac S. Hathaway here?
A. I don't know him.
Q. Do you know Elisha T. James?
A. Know of him.
Q. He is a teacher at the State College?
A. Yes, I know him.
Q. Did you see him here today?
A. I haven't seen him.
[fol. 142] Q. He is a colored man?
A. Yes, sir.
Q. You didn't see him?
A. Yes, sir.
Q. Do you know Robert McTier?
A. I am not familiar with him.
Q. Are you a member of the National Association for the Advancement of Colored People?
A. I am.
Q. Did you serve in the Armed Forces of this country during the last war?
A. I did not.
Q. Were you ever called up as a draftee?
A. I was.
Q. Were you called up then?
A. I was.
Q. Were you rejected?
A. I was.
Q. Are you a registered voter of this county?
A. I am.

Q. When you testified you didn't know of any colored people serving on juries in this county you didn't have reference to jurors drawn today, did you?

A. I did not.

Q. Have you ever been in Court during a trial in your life?

A. I have not.

Q. You don't know then whether negro jurors served in this Court House, or not?

A. I wouldn't know unless I saw them here.

Redirect examination.

By Lawyer Billingsley:

Q. Are you a member of church?

A. Yes, sir.

Q. What church are you a member of?

A. Alexander Baptist Church.

[fol. 143] Q. Do you belong to any other organizations such as clubs, social clubs and lodges?

A. Not at present.

Q. Did you ever attend school in this county?

A. Yes, sir.

Q. How far did you go in school?

A. Through Senior High School.

Q What school did you attend?

A. Booker Washington.

JULIUS LOWE, having been duly sworn, was examined and testified as follows:

Direct examination:

By Lawyer Billingsley:

Q. State your name.

A. Julius Lowe.

Q. What is your address?

A. 2067 Patomac Avenue.

Q. Are you a resident citizen of Montgomery County, Alabama?

A. Yes, sir, I am.

Q. How long have you been such?

A. All my life.

Q. How old are you?

A. Forty three years.

Q. You have been a resident citizen of this county for forty three years?

A. That is right.

Q. What is your occupation?

A. Pullman porter.

Q. How long have you been a Pullman porter?

A. Thirteen years.

Q. I will ask you whether or not you are a householder of this county, whether you own your own property?

A. Yes, sir.

Q. Have you ever been convicted of a crime involving [fol. 144] moral turpitude, or a crime for which you served time in the penitentiary?

A. No, never have.

Q. Are you afflicted with any permanent disease?

A. Not that I know of.

Q. Have any physical weakness?

A. No, not that I know of.

Q. Can you read and write the English language?

A. Yes, sir.

Q. Are you a member of any church?

A. Yes, sir.

Q. What church?

A. Metropolion Methodist Church.

Q. Are you a member of any social clubs in this county?

A. The Elks is the only one.

Q. You are a member of the Elks?

A. Yes, sir.

Q. Are you a member of any lodges?

A. No.

Q. Are you a member of any other organizations?

A. No, that is all.

Q. Have you ever been summoned for jury duty in this county?

A. Never have.

Q. Never been summoned for jury duty in this county?

A. I have not.

Q. Therefore, you have never served on a jury?
A. No.
Q. Is that right?
A. That is right.
Q. Have you any brothers over the age of twenty one living in this county?
A. I have two.
Q. You have two brothers living in this county over the age of twenty one?
A. Two over the age of twenty one.
Q. Who live in this county?
A. Yes, sir.
[fol. 145] Q. Have either of those brothers been involved in a crime involving moral turpitude?
A. Never have.
Q. Are either of them afflicted with a permanent disease or physical weakness?
A. No, they are not.
Q. Are both of them employed in this county?
A. Yes, they are.
Q. Work in this county?
A. Yes.
Q. Have either of those brothers of yours been summoned for jury duty?
A. Only one brother was summoned for Federal.
Q. Neither of said brothers have been summoned for jury duty in Montgomery County?
A. Montgomery County, never have.
Q. To serve on a jury in Montgomery County?
A. No, never have.
Q. And, therefore, haven't served as jurors, haven't served on a petit jury in this county?
A. No, they haven't.

Cross-examination:

By Mr. Garrett:

Q. Was that your brother in here? Are you a brother of the witness who testified a few minutes ago, Reverend Frank Lowe?
A. No relation.

Q. Just have the same last name?

A. Same name, that is right.

Q. One of you brothers was on the Federal Jury?

A. That is right.

Q. Have you ever served on the Federal Jury?

A. No.

Q. Has the other brother served to your knowledge on the Federal Jury?

A. No.

Q. You testified you are a Pullman porter; is that right?

A. That is right.

[fol. 146] Q. That requires you to travel a lot?

A. Yes, sir.

Q. Where do you travel to from Montgomery?

A. Well, different places, maybe Chicago, New York, New Orleans, Atlanta.

Q. Over what period of time are you usually gone from your home in Montgomery?

A. On some jobs leave like this morning at five-fifteen and be back Wednesday morning at ten-ten, and be away three nights, and three home; and other jobs maybe gone four days and then home for eight days.

Q. A good part of your time is spent in traveling; that is your job?

A. Yes, sir.

Q. You testified you have never been summoned, I believe was the way you put it, for service as a petit juror here in Montgomery, that is, you just don't know whether you had been summoned though?

A. I never received the summons.

Q. If you were gone at the time and were not served you wouldn't have known about it?

A. When I got in I received this summons here, although I was gone at the time. I am sure my wife would tell me if I had one.

Q. This is the only summons to your knowledge?

A. I got one before for this same case, but they told me it was put off until this term of Court.

Q. You didn't testify at that time, did you?

A. Never did.

Q. That was the last term of Court?

A. Last term of Court.

Q. I will ask you if you are a member of the National Association for the Advancement of Colored People, active member of that association?

A. No, sir, I am not.

Q. Have you been a member?

A. No, sir.

[fol. 147] WILLIAM SINGLETON, JR., having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Billingsley:

Q. State your name and address to the Court, please.

A. William Singleton, Jr., 3219 Mobile Drive.

Q. Are you a resident citizen of Montgomery County, Alabama?

A. Yes, I am.

Q. How long have you been a resident of this county?

A. Thirty three years.

Q. What is your occupation?

A. Operator of a radio and home appliance store.

Q. You operate a radio and home appliance store?

A. T. V., radio and home appliances.

Q. How long have you been engaged in such business?

A. About five years.

Q. Do you own your own home in this county?

A. Yes, I do.

Q. I will ask you further whether or not you can read and write the English language?

A. Yes, I can.

Q. Have you ever been convicted of a crime, criminal offense, for which you had served time in the penitentiary?

A. No, I have not.

Q. Are you afflicted with any permanent disease or physical weakness?

A. No.

Q. How far did you get in school?

A. I finished college.

Q. And you belong to some organizations in this county, I believe?

A. Yes.

Q. Do you belong to any social organizations?

A. I don't have much time as far as social activities, although I have had membership in a few social organizations.

Q. Do you hold any memberships in fraternal organizations?

A. Yes.

Q. Will you name those organizations?

[fol. 148] A. I am a member of the Omega Phi Phi fraternity, and a member of the Democratic Progressive Association.

Q. I will ask you if you have ever been summoned for jury duty in this county?

A. No, sir, I have not.

Q. Therefore, you haven't served on a jury in this county?

A. No, sir.

Q. Haven't served on a petit jury in this county?

A. No.

Q. Have you any brothers who are over the age of twenty-one?

A. No.

Cross-examination.

By the Assistant Solicitor:

Q. How old did you say you were?

A. Thirty-three.

Q. Ever been in the Service, Army, Navy, Air Force?

A. Yes, I was.

Q. When?

A. From 1943, the latter part of 1943, until 1946.

Q. You were asked by the defendant's attorney if you had ever been convicted of any crime for which you served time in the penitentiary. Have you ever been convicted of any crime at all?

A. No, I have not. I have never been in Court accused of a particular offense.

Q. Do you know of any of your friends serving on juries in this county?

A. Yes.

Q. Off hand how many would you say?

A. Three, four perhaps.

Q. Have you ever been in Court during the trial of a case in this county?

A. Yes, I have.

Q. Have you ever seen negroes serving on juries here?

A. No, I haven't.

Q. Have you e er seen negroes called as jurors whether they served; or not?

[fol. 149] A. No, I haven't, except this morning.

Q. How many did you see this morning?

A. Six.

Q. How many times have you been in Court prior to this during the trial of a case?

A. Perhaps five times.

Q. Here in the Court House?

A. Yes.

Q. When was the last time you were here prior to today?

A. About three months ago, I think.

Q. Were you here as a spectator or witness, or what?

A. I was here as a witness at that time.

Q. Were you in the witness room or in the Court Room?

A. I was in the Court Room prior to going in the witness room.

Q. Were there any negroes called on the venire, the group of jurors called for duty here, if you recall?

A. No.

Q. Three months ago would have been what month?

A. I think it was perhaps—I don't remember the date. I don't think it was a jury case; I think it was another case which was dismissed prior to the actual trial of the case. They didn't try it with a jury anyway.

Q. You don't know whether there were any negroes on the venire, or not?

A. I didn't see any.

Q. Was that the criminal or civil term of Court?

A. I don't remember.

Q. Prior to January or February, or whenever you were here, when was the last time before that you were in court?

A. Oh, about two years ago perhaps.

Q. Was that when this same case was tried?

A. No. I wasn't here when this case was tried before.

Q. You are a member of the National Association for the Advancement of the Colored People?

A. Yes, I am.

[fol. 150] Redirect examination.

By Lawyer Billingsley:

Q. Have you personal acquaintanceship with many negroes in this county?

A. Pretty wide acquaintance among negroes in the county.

Q. Have you ever heard of negroes serving on juries in this county?

A. No, I haven't.

Frank S. Brown, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Billingsley:

Q. What is your address?

A. 3301 Suwanee Drive.

Q. I believe your name is Frank S. Brown?

A. That is right.

Q. You are a resident of Montgomery, Alabama?

A. I am.

Q. How long have you been living here?

A. All my life.

Q. What is your occupation?

A. Pullman porter.

Q. Do you own your own home?

A. I do.

Q. Did you go to school here in Montgomery?

A. I did.

Q. How far did you go in school?

A. High School.

Q. Got through high school?

A. Yes, sir.

Q. Have you ever been convicted of any crime?

A. Never.

Q. Ever have any permanent disease or physical weakness?

A. Never.

Q. Have a pretty good reputation in the community where you live?

[fol. 151] A. I think so.

Q. Do you belong to a church?

A. I do.

Q. Do you belong to any other organizations?

A. One.

Q. Which is what?

A. The Elks Club.

Q. Do you belong to the National Association for the Advancement of Colored People?

A. I do.

Q. Have you ever been called for jury service?

A. Never.

Q. Have you any brothers?

A. No brothers.

Q. Have you a pretty wide acquaintance in Montgomery County?

A. Yes, sir, I have.

Q. Among the people in Montgomery County?

A. Yes, sir.

Q. Do you know of any of your friends and acquaintances serving on the petit or Grand Jury here in this county?

A. No, sir.

Q. Don't you know a single one?

A. Not a one.

Q. Do you know of anyone around the Elks Club that you know served on a jury?

A. No.

Q. Go to church fairly regularly?

A. Whenever I am home. Not every Sunday, I am sorry.

Q. Do you know whether or not your minister has been approached for names of persons who might be suitable to serve as jurors in this county?

The Assistant Solicitor: We object to that as hearsay.

The Court: I will let you ask him if he knows. You cannot ask him about that unless he knows.

The Witness: I don't know.

[fol. 152] By Lawyer Billingsley:

Q. You don't know of such a thing?

A. No.

Q. Has it ever been announced in the pulpit by the minister of the church he has been approached by the Jury Commission of this county in an effort to obtain names of qualified negroes to serve on juries in this county?

A. No.

Q. Has anyone around the Elks Club ever told you the Jury Commission is seeking to find out names of negroes to serve as jurors in this county?

The Assistant Solicitor: We object.

The Court: Objection sustained.

By Lawyer Billingsley:

Q. What run have you as a Pullman porter?

A. I beg your pardon.

Q. What is your regular run?

A. At this time I am running extra.

Q. When you say extra you mean you go anywhere? Is that right?

A. Yes, sir.

Q. How long have you been a Pullman porter?

A. Fifteen years.

Q. How long have you been on the extra board?

A. Since September last year.

Q. Up to that time had you a regular run?

A. Montgomery to Chicago.

Q. How long do you work?

A. Three days on and three days off.

Q. Three days on and three days off?

A. That is right.

Q. Where is your headquarters?

A. Headquarters Montgomery.

Q. This is your headquarters?

A. Here is my terminal.

Q. You actually spend four days here?

[fol. 153] A. Three days and three nights. I would get three days and three nights home, and then I leave.

Q. What do you do on the other day?

A. Do you mean in Chicago?

Q. I mean that day.
A. Do you mean here?
Q. In Montgomery?
A. Not necessarily. Sometimes I am here and sometimes I am away.
Q. I am trying to develop about how much time you actually spend home and how much time you actually spend away?
A. Six months away and six months home.
Q. In the course of a week in that extra work, during the course of one week you would probably be gone three or four days and be three or four days at home?
A. That is true.
Q. You have never been summoned to serve on a jury?
A. Never.
Q. And you are how old?
A. Forty next birthday, November.
Q. Been in the Pullman service for fifteen years?
A. Yes, sir.
Q. What did you do before you went in the Pullman service?
A. Ran my own cleaning plant.
Q. Here in Montgomery?
A. Here in Montgomery.
Q. Did you operate the plant yourself?
A. Another man and me did.
Q. You and another man were partners in the operation of a dry cleaning plant?
A. That is right.
Q. During all that time were you ever called as a juror in this county to serve on a case?
A. Never.

Cross-examination.

By Mr. Garrett:

Q. Have you ever served on a Federal Jury?
[fol. 154] A. No, sir.
Q. Ever serve on a Federal Grand Jury?
A. No, sir.
Q. Because you are away traveling?
A. No, sir, I don't think so.

Q. Have any acquaintances of yours ever served on the Federal Jury?

A. Not to my knowledge.

Q. Either trial jury or Grand Jury?

A. No, sir.

Q. And do you know Dave Caffey?

A. I do.

Q. Has he been head of the negro Elks Club?

A. I assume so. I don't know that.

Q. You don't know whether Caffey has been approached for names of qualified members of the Elks Club, or not, do you?

A. No, sir. I wouldn't know that.

Q. Have you ever heard it discussed by anybody that he has been approached?

A. Never.

Redirect examination.

By Lawyer Hall:

Q. Who is Exhalted Ruler of the Elks this year?

A. Mr. Beverly, I believe.

Q. How long was he Exhalted Ruler of the Elks?

A. Perhaps six to eight months.

Q. Who was Exhalted Ruler previous to that time?

A. I know him. I am trying to think of his name. I am afraid I cannot give it at the moment.

Q. Was it Mr. Jerry?

A. I think his name is Jarrett.

Q. How long was he Exhalted Ruler?

A. For about a year.

Q. Has either of those men told you he has been approached?

The Assistant Solicitor: We object.

The Court: Objection sustained as hearsay. He previ- [fol. 155] ously testified nobody had ever told him. We are going at it backwards. If nobody ever told him I am sure these men didn't tell him.

Lawyer Hall: We withdraw the question.

Recross-examination.

By Mr. Garrett:

Q. You didn't remember Jarrett's name very well. He was Exhalted Ruler about eight months ago, was he?

A. I don't like to be pinned down to the time of year because I am not too active in the club. I know Jarrett very well.

Q. You testified you assumed he Caffey was the head of the Elks Club. What did you mean by that answer when I asked you the question?

A. That is before my day.

Q. When did you become a member of the Elks Club?

A. About five years ago.

Q. D. Caffey has been a member of the club?

A. Yes, sir.

Q. You do know him?

A. I know him.

William James Boswell, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name to the Court.

A. William James Boswell.

Q. Where do you live?

A. 1926 Cleveland Avenue.

Q. And that is in the City of Montgomery?

A. Yes, sir, it is.

Q. You are a colored male?

A. Yes.

Q. How old are you?

A. Thirty-two.

Q. Are you a native of the City of Montgomery?

A. Yes, I am.

[fol. 156] Q. Born and raised here?

A. Yes, sir.

Q. Go to school here?

A. Yes.

Q. How far did you go in school?
A. I am a Junior.
Q. Junior what?
A. In college.
Q. Do you mean you have two years of college?
A. That is right.
Q. Where is that, the State Teacher's College?
A. Alabama State Teacher's College.
Q. Are you in school now?
A. No, I am out for the summer.
Q. Are you an ex-service man?
A. No, I am not.
Q. Why are you so late going to school; did something come up to prevent you from going to school?
A. I had been working and got out of a job. In other words, I was unemployed for awhile, and during the time of unemployment I decided to go back to school, which was the best thing I did. I was employed by the L & N Railroad, and they started to furlough men, and I thought the best thing for me to do was to go back to school.
Q. So you are now a junior at the State Teachers College for Negroes?
A. Yes, sir.
Q. Are you married?
A. Yes, sir.
Q. Own your own home?
A. Yes, sir.
Q. Are you a voter?
A. Yes.
Q. Do you go to church?
A. Yes, I do.
Q. What church?
A. St. John's A M E.
Q. Do you go to church regularly?
[fol. 157] A. Yes, I do.
Q. Are you an officer in your church, are you active?
A. I am an active member, but I am not an officer.
Q. Do you belong to any other organizations or fraternal groups?
A. Yes, I belong to the Masons.
Q. You are a Mason?

Q. Do you belong to the National Association for the Advancement of Colored people too?

A. Yes.

Q. Have you ever had a crippling or disabling disease?

A. No.

Q. Have you ever had anything wrong with you, unable to get about in the regular course of business?

A. No.

Q. Have you ever been arrested for any crime?

A. No.

Q. You can read and write the English language, of course?

A. Yes, I can.

Q. Have you ever served on a jury in Montgomery County, Alabama?

A. No, I have not.

Q. Any kind of jury?

A No.

Q. Have you ever been summoned for jury service in Montgomery County, Alabama?

A No. The only thing that was ever served on me was the summons I received to come here as a witness.

Q. This particular Court?

A. That is right.

Q. Have you any brothers?

A. Yes, I have.

Q. Living in this county?

A. Yes.

Q. How old are they?

A. I have one twenty-one or twenty-two.

Q. Have you anymore?

[fol. 158] A. Yes, I have another one.

Q. How old is he?

A. He is in the Air Corps.

Q. He is not here?

A. No.

Q. In Montgomery County?

A. No.

Q. Have you any friends, acquaintances, any relatives living in Montgomery County who served on the jury in this county?

A. No, I don't know of any.

Q. Never at any time, you don't know of any?
A. No, I don't.
Q. What High School did you go to here?
A. Booker Washington.
Q. Where is that?
A. Out on Union Street.
Q. How many pupils graduated in your class at Booker Washington?
A. If I am not mistaken, about forty-two.
Q. What year was that?
A. That was in 1941.
Q. Have you kept up with them over the years since you came out of school?
A. Yes.
Q. See them quite regularly?
A. I see them occasionally.
Q. Do you know whether any members of that class have served on the jury in this county?
A. No, I don't.
Q. Do you know whether any of your teachers at Booker Washington have served on the jury in this county?
A. I don't know anything about them.
Q. Have your brothers ever served on a jury in this county?
A. Not that I know of.

Cross-examination.

By the Assistant Solicitor:

Q. How old are you?
[fol. 159] A. Thirty-two.
Q. How long have you lived in Montgomery?
A. Since birth.
Q. Where do you live?
A. 1926 Cleveland Avenue.
Q. How long have you lived there?
A. I have lived there approximately four years.
Q. Where did you live before that?
A. I lived on South Decatur Street.
Q. You say you don't know whether any of your class mates in High School have served on the jury in this county?
A. No, I don't.
Q. Have you ever been in Court before this?

A. No, sir, not that I know of.

Q. How would you know whether any of your class mates have, or haven't?

A. I haven't been here to see them.

Q. You don't know whether they have, or not?

A. That is right.

Q. That would also apply to the teachers and, therefore, you just don't know?

A. I just don't know anything about them.

Q. Tell me how you happened to get here today, who asked you to come as a witness today?

A. The Sheriff.

Q. Have you ever talked to any of these four men sitting here, these four lawyers about your testimony?

A. Not that I know of.

Q. What?

A. No.

Q. You can tell me yes or no. Did you talk with them, or did they talk with you before you went on the stand?

A. No.

Q. Never talked to any of these four men?

A. No.

Q. Talked to anybody about this case at all?

[fol. 160] A. I didn't know anything to talk to them about.

Q. Do you mean no attorney or anybody has approached you and asked you to come down here?

A. No.

Q. That is, you are only notified by the Sheriff to come down here?

A. Yes.

Q. Did you talk with anybody, or did anybody have any knowledge of what you were going to testify to?

A. No, sir.

Q. Nobody asked you what you were going to say?

A. No, sir.

Q. Didn't ask you if you had ever served on a jury?

A. No.

Q. Do you know F. L. Lowe?

A. I know some Lowes. I don't know the initial.

Q. Do you know the manager of the Smith and Gaston Funeral Home by the name of F. L. Lowe?

A. I don't know him. Gaston I do.

Q. What is your address on Cleveland Avenue?
A. 1926 Cleveland Avenue.
Q. He lives on Cleveland Avenue too?
A. He does, that is right.
Q. Did you see him here today?
A. I don't remember.
Q. Were you out in the audience when they called off the jury?
A. I was in the back. I was here.
Q. You saw and heard the names called out, didn't you?
A. I cannot check everybody who is here.
Q. You sat where you could see?
A. Yes.
Q. Did you see F. L. Lowe called up with the other jurors?
A. I cannot say because I don't know him that well.
Q. You didn't recognize him at all?
A. I wouldn't say he was and wouldn't say he weren't.
Q. How many colored people did you see called up before the Bar when the jurors were called up from time to time?
[fol. 161] A. I don't know because I didn't count them.
Q. In your best judgment, how many do you think were called up with the jurors?
A. I cannot say because I didn't keep up with them when they called them off personally.
Q. Do you think as many as five or six negro jurors went up with the other jurors this morning?
just perhaps. I cannot say definitely.
Q. You saw them called up with the other jurors?
A. Yes, sir.
Q. Saw them go up with the other jurors?
A. Yes, I saw them.

Redirect examination:

By Lawyer Billingsley:

Q. You saw a lot of white folks being called up, didn't you?
A. Yes, I did.

GARRIS S. COVINGTON, having been duly sworn, was examined and testified as follows:

Direct examination:

By Lawyer Hall:

Q. Where do you live?
A. 1254 South Holt Street, Montgomery.
Q. What is your occupation?
A. Meat cutter.
Q. Are you employed here in the city?
A. Yes.
Q. How long have you lived here in Montgomery?
A. I am on my fourteenth year.
Q. Are you a registered voter?
A. Yes, I am.
Q. And belong to a chruch?
A. Yes, sir.
Q. Belong to the National Association for the Advance-
[fol. 162] ment of Colored People?
A. No.
Q. Have you ever been called to serve on a jury in this county?
A. I was summoned for jury duty on March 7, in this same case.
Q. On this case?
A. This case.
Q. What year was that?
A. 1955.
Q. March 7th of this year?
A. Yes, sir.
Q. Is that the first time you had ever been summoned for jury duty?
A. Yes.
Q. Do you know if this cause was heard?
A. No, it wasn't.
Q. Have you been summoned again in this case?
A. Yes, sir, I was again summoned as a witness.
Q. And not as a juror?
A. That is right.
Q. Have you ever served on any jury other than—have you ever served on a jury in this county?

A. No, sir.

Q. Have you any brothers?

A. Yes, sir, I have.

Q. Do they live here in Montgomery?

A. No, sir.

Q. Do you belong to any more organizations except your church?

A. Mason.

Q. You are a Mason?

A. Yes, sir.

Q. How many members of that Masonic Lodge have you?

A. About one hundred and thirty, one hundred thirty one or something like that.

Q. Do you hold an office in the Lodge?

A. Not now.

Q. Did you in the past?

A. Yes, sir.

[fol. 163] Q. What office did you hold?

A. Senior Deacon.

Mr. Garrett: I don't see the reason for these questions. He has testified he has been called for jury service.

The Court: I suppose he is going to ask whether any of those people have ever been on the jury. Let us see what the question is he is going to ask.

Lawyer Hall: We don't deny there are negroes on this jury.

The Court: The objection is overruled and there is no need of arguing on that. I am going to let you go ahead and question this witness.

By Lawyer Hall:

Q. You said there are one hundred some members in your Masonic Lodge?

A. Yes, sir; in my particular lodge.

Q. Do you have a wide acquaintance among negroes in Montgomery?

A. I think I have.

Q. Do you know any other negroes serving on juries in this county except you?

A. Yes, one.

Q. You know of one negro?

A. Yes, sir, I do.

Q. Is that a person you know personally?
A. Yes, sir.
Q. Served as a juror in Montgomery County?
A. Yes, sir.
Q. Have you had occasion to be in Court over the years on several occasions?
A. Not in Montgomery.
Q. Not in Montgomery?
A. No.

(No Cross Examination.)

[fol. 164] W. E. SANKEY, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you give your address?
A. 728 Mill Street.
Q. That is here in the City of Montgomery?
A. That is right.
Q. You are a negro?
A. That is right.
Q. How old are you?
A. I am forty-seven years old.
Q. How long have you lived here in Montgomery?
A. About forty years.
Q. What is your occupation?
A. I am a Pullman porter.
Q. What is your run as a Pullman porter, have you a regular run or have an extra run?
A. I am on the extra board.
Q. How long have you been on the extra board?
A. For about three years.
Q. Working out of Montgomery, Alabama?
A. Working out of Montgomery, Alabama.
Q. What is your run?
A. Montgomery to Washington.
Q. How long do you work?
A. Four days on and four days off.

Q. Four days away between here and Washington, and when you get back this your headquarters?

A. That is right.

Q. Four days off here?

A. Yes, sir.

Q. How long have you been a Pullman porter?

A. Fifteen years.

Q. What did you do before you became a Pullman porter?

[fol. 165] A. A cook.

Q. Where did you work?

A. Blue Moon Inn.

Q. Here in the City of Montgomery?

A. In the City of Montgomery.

Q. How old were you when you went to work as a Pullman porter?

A. About thirty-one, I believe, around thirty years old.

Q. Up until the time you became a Pullman porter had you ever been called for jury duty?

A. No, I hadn't.

Q. You have any brothers?

A. I have one.

Q. One here in Montgomery?

A. One here in Montgomery.

Q. What is his age?

A. He is about fifty-one, fifty-two, something like that.

Q. What is his occupation?

A. Works for the Atlantic Coast Line.

Q. Is he a porter too?

A. No, sir, the freight department.

Q. Does he work here in the city?

A. That is right.

Q. For the Atlantic Coast Line?

A. That is right.

Q. He works here in Montgomery, doesn't have to go out of the city?

A. Doesn't have to go out.

Q. Has he ever been called for jury service?

A. He has not.

Q. Has he ever been arrested or convicted of a crime?

A. He has not.

Q. Have you?

A. I have not.

Q. Do you own your own property?
A. I do.
Q. Does he own any property?
A. He does.
[fol. 166] Q. Ever been afflicted with any serious disabling disease in any way?
A. I have not.
Q. Has your brother ever been afflicted with any type or form of disease?
A. He has not.
Q. Can you read and write?
A. I can.
Q. How much education have you?
A. I got twelve years of schooling.
Q. Your brother.
A. The same.
Q. Do you know many persons in Montgomery?
A. I do.
Q. Have you a wide acquaintance among negroes here in Montgomery?
A. I have.
Q. Do you belong to any organization?
A. I belong to the Dexter Avenue Baptist Church.
Q. Do you hold any office in the Dexter Avenue Baptist Church?
A. I am not an officer.
Q. Do you belong to the Elks or the Masons?
A. I belong to the Masons, not the Elks.
Q. Belong to the National Association for the Advancement of Colored People?
A. I do.
Q. About how many negroes you know of, duly qualified negroes that you know of, who have served on a jury in this county?
A. I don't remember too many. I only know one or two.
Q. One or two?
A. Yes, sir.

Cross-examination.

By Mr. Garrett:

Q. You are here about half the year and away half the year?

A. That is right.

Q. You are not around here the half of every year?

A. That is very true.

Q. You haven't been around the Courts very much?

[fol. 167] A. No, sir.

Q. I this the first time you have ever been in here?

A. This is not the first time.

Q. Were you here as a witness then?

A. Never as a witness.

Q. What were you then, a defendant?

A. No, just a spectator.

Q. What Court?

A. I don't remember which one.

Q. How long ago?

A. It has been a good while ago. I don't remember the date.

Q. Were they trying criminal or civil cases?

A. Trying criminal cases.

Q. See any colored people on the jury?

A. I did not.

Q. No colored people on the venire at that time?

A. No, sir.

Q. Have you or your brother ever been on a Federal Jury?

A. Never have.

Q. Have you ever attempted to get on any jury?

A. I never attempted to get on.

Q. Have you ever had any discussion about getting on the jury before now?

A. I never had any discussion.

Q. Never discussed with your friends about getting on the jury of Montgomery County?

A. I sure haven't.

Q. You wouldn't have any occasion to know whether or not any of your friends have been on the jury, or not, unless they just happened by chance to mention it?

A. That is true.

Q. Are you a voter?

A. That is right.

[fol. 168] C. J. Hixson, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall.

Q. Give your address.
A. 664 Mobile Street.
Q. In the City of Montgomery?
A. Yes, it is.
Q. How long have you lived here in Montgomery?
A. I have lived here in Montgomery since about 1927.
Q. 1927?
A. Yes, sir.
Q. How old are you?
A. Forty-two.
Q. What is your occupation?
A. Lay bricks and preach.
Q. Have you a regular church?
A. Yes.
Q. What is your church?
A. St. Christopher Church, Mt. Willing, Alabama.
Q. Close to Montgomery?
A. Thirty-seven miles down in Lowndes County.
Q. Are you regularly employed in Montgomery as a brick layer?
A. Yes, sir.
Q. You have been so employed here how long?
A. Laying bricks since 1930.
Q. Do you own property in this county?
A. Yes, sir.
Q. Are you a registered and qualified voter?
A. Yes, sir.
Q. Have you ever had any serious disfiguring or disabling disease?
A. No.
Q. Such as hernia or injured vertebra?
A. No.
Q. Have you ever been arrested for a criminal offense?
[fol. 169] A. No, I have not.
Q. Have you ever been convicted of a crime?
A. No.

Q. Have you ever served on any jury in this county?
A. No.
Q. Never been summoned for jury duty?
A. No, I have not.
Q. Has anybody ever approached you about being in jury service?
A. No.
Q. Do you belong to any organizations besides your church?
A. I belong to the Masonic organization.
Q. You are a Mason?
A. Yes, sir.
Q. Do you belong to the National Association for the Advancement of Colored People?
A. I am not a member now. I was.
Q. You let your membership lapse?
A. Yes.
Q. Have you any brothers here in Montgomery?
A. I have one brother.
Q. How old is he?
A. He is forty-four.
Q. What is his occupation?
A. He lays bricks.
Q. He is a brick layer also?
A. Yes, sir.
Q. And regularly employed?
A. He is a sub-contractor.
Q. As such he is fairly regularly employed?
A. Yes, sir.
Q. A man who presently owns property in this county?
A. Yes, sir.
Q. In this city?
A. Yes, sir.
Q. Is he a qualified voter?
[fol. 170] A. I really couldn't tell you.
Q. You don't know?
A. I don't know.
Q. Do you know whether he has been convicted of a crime?
A. No, I don't know. I don't think so.
Q. Do you mean that you don't know, or he hasn't?
A. He hasn't.

Q. Has he served on any jury?
A. No.
Q. In this county?
A. No.
Q. Did you go to school in Montgomery?
A. The Swayne School, what they call the Booker Washington High School. It wasn't the Booker Washington High School at that time.
Q. How far did you go in school?
A. I went to the tenth grade.
Q. You said it is the Swayne School?
A. These new people go to Washington, old people to Swayne.
Q. At the time you went to school it had some other name.
A. That is right.
Q. You say you went to the tenth grade?
A. Yes, sir.
Q. You can read and write the English language, can you?
A. Yes.
Q. In your work as a bricklayer you have occasion to meet many people in the county, both white and negroes?
A. Some of them.
Q. Have a wide acquaintance here in Montgomery?
A. Yes.
Q. Do you know of any negro who served on any jury here in Montgomery County at any time since you have been here?
A. I think it was—I don't know his initials—Robinson, served one time on the jury, lived on Thurman Street.
Q. Is that the only one you knew of?
A. That is the only one I know of.
[fol. 171] Q. Do you recall when that was?
A. It has been, I think, some seven or eight years, or more.
Q. Do you know any reason why he hadn't since served as a juror?

The Assistant Solicitor: We object to that.
The Court: The objection is sustained.
Lawyer Hall: We ask for an exception.
The Court: An exception is granted the defendant.

Cross-examination.

By the Assistant Solicitor:

Q. How old did you say you were?

A. I am forty-two. My first name is Columbus James; C. J. Hinson is the initials.

Q. You testify you don't know of one negro serving on juries in this county in seven or eight years; is that what you tell us?

A. Yes, sir.

Q. When you say serve on the jury what do you mean?

A. What I mean, probably some didn't ever serve in the jury box. I haven't ever seen them serving. That is the only way I would have of telling.

Q. You are referring to sitting in the jury box, selected and put in the jury box?

A. Yes, sir.

Q. Do you know of jurors summoned here who didn't serve?

A. No, I don't.

Q. Have you ever been in Court before today?

A. Yes, I was in Court once before as a witness. It has been some big length of time back; I cannot recall when it was now. It was about someone injured on the job, or something.

Q. It wasn't in criminal court then, was it?

A. No.

Q. You cannot say whether any negroes serve on jury venires in this county, can you?

A. Well, in our association I would know about some of them.

Q. You wouldn't know unless they told you?

A. Well, I believe I would know.

[fol. 172] Q. How would you know?

A. According to what they say in the association.

Q. In what association?

A. The members we have in the association here.

Q. What association?

A. The Masons and the brick layers union.

Q. You would only know what they told you; is that right?

A. Yes, sir.

Q. Because you didn't actually see them serving on the jury?

A. No, I haven't; that is right.

Q. Then you wouldn't know, would you?

A. Yes, I would know.

Q. How would you know?

A. Like I found out about Robinson.

Q. You wouldn't know unless he told you?

A. Somebody stopped and told me; he didn't tell me.

Q. Somebody just told you Robinson served; is that right?

A. They told me that he was. I know it is right because I remember when he was down here.

Q. You have no personal knowledge whether or not negroes were called for jury duty in this county, have you?

A. No.

Redirect examination.

By Lawyer Hall:

Q. You know that you haven't been called, don't you?

A. Yes, sir.

J. E. Cummings, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your address?

A. 1032 Ewell Street.

Q. That is in the City of Montgomery, isn't it?

A. Oh, yes, sir.

[fol. 173] Q. How long have you lived in Montgomery?

A. All my life.

Q. How old are you?

A. Forty-three.

Q. What is your occupation?

A. I am employed by the Pullman Company as a Pullman porter.

Q. You are a Pullman porter at present?

A. Yes, sir.
Q. Are you on a regular run or extra run?
A. Extra run.
Q. How long hav you been on the extra board?
A. About eight months.
Q. Prior to that did you have a regular run?
A. Yes, I did.
Q. Where was it?
A. From here to Chicago.
Q. How long were you working?
A. Every third day. Three days lay over in Montgomery.
Q. And this is your headquarters here?
A. Yes, sir.
Q. Your work is out of Montgomery?
A. Yes, sir.
Q. How long have you worked for the Pullman Company?
A. Fifteen years.
Q. Before that time where did you work?
A. I had a little business of my own.
Q. Was that located in the City of Montgomery?
A. Yes, it was.
Q. What kind of business?
A. Dry cleaning business.
Q. How long were you in that type of business? How old did you say you are now?
A. Forty-three.
Q. You started working for the Pullman Company when you were twenty-eight years old; is that right?
A. Yes, sir.
(fol. 174) Q. Are you a native of this county?
A. Yes, sir.
Q. Go to school here?
A. Yes, sir.
Q. What school?
A. Alabama State.
Q. How far did you do?
A. I had finished high school and one year in college.
Q. One year in college?
A. Yes, sir.
Q. Tell me, have you ever served on a jury here in Montgomery County?
A. No, I have not.

Q. Have you ever been convicted for the commission of any crime or offense against the State of Alabama?

A. No.

Q. Or the City of Montgomery?

A. No.

Q. Do you own any property?

A. Yes, I do.

Q. In the county?

A. Yes.

Q. Do you belong to any church or any lodge?

A. Yes, I do.

Q. Which church?

A. Old Bethel Church.

Q. Do you hold any office in the church you belong to?

A. No, I am not an officer now.

Q. Do you belong to any fraternal organizations?

A. Yes, I do.

Q. Which?

A. The Elks lodge.

Q. You are an Elk?

A. Yes.

Q. Are you a Mason by any chance?

A. Yes, sir.

[fol. 175] Q. Masonic lodge?

A. Yes, sir.

Q. Do you belong to the National Association for the Advancement of Colored People?

A. Yes, sir.

Q. Have you ever had any serious disease, any crippling disease such as would impair and impede your free movement?

A. No, sir.

Q. Causing you to be objectionable to other people?

A. No.

Q. Never served on a jury at all?

A. No, sir.

Q. In this county?

A. No, sir.

Q. Before you became a Pullman porter or after?

A. Never.

Q. And you didn't become a Pullman porter until you were twenty-eight years of age?

A. Twenty-eight, that is right.

Q. You have a wide acquaintance among negroes in the City of Montgomery?

A. I think so, yes, sir.

Q. Do you know any negroes who have served on a jury in this county?

A. No, I don't know of any.

Q. Have you any brothers?

A. No, I don't.

Q. Any cousins here in Montgomery?

A. No.

Cross-examination.

By Mr. Garrett:

Q. You were asked if you ever served on a jury in Montgomery County and you answered no. Have you ever served on Federal juries anywhere?

A. No, I haven't.

Q. You are a Pullman porter, you said?

A. I am a Pullman porter.

Q. You have never served on a Federal jury. You are [fol. 176] speaking of here in Montgomery? Here in Montgomery?

A. No.

Q. Don't know anybody serving on a State jury here in Montgomery?

A. I guess I would predicate that by saying I never have. I have heard of them, but I don't know it.

Q. You don't know them, but you heard of them?

A. That is true.

Q. How many have you heard of serving on a jury in Montgomery County?

A. Not too many. I couldn't enumerate the number.

Q. You haven't any judgment at all?

A. No, I haven't.

Q. You are away from Montgomery quite a bit on your job, aren't you?

A. That is true.

Q. You spend a great deal of your time traveling?

A. That is right.

Q. What percentage of a year would you be traveling?

A. Well, I estimate it about, when I am running regular it would be about five months out of the year. Over the period of a whole year it would be approximately five months.

Q. And that is spread out over certain days of the week, isn't it?

A. Yes, that is true.

Q. You are a porter?

A. I am.

Q. Have you ever made any attempt to get on the jury roll?

A. No.

Q. Have you ever been in Court before?

A. I have been in City Court.

Q. You have never been in the Circuit Court or any other court excepting the City Court?

A. That is right.

Redirect examination.

By Lawyer Hall:

Q. Anybody ever approach you and tell you how you could became a juror in this county?

A. No, sir.

[fol. 177] Q. Have you ever received an official communication from the Jury Commission of this County in reference to being a juror?

A. No, sir.

Mr. Garrett: We object to that.

The Court: He has already answered the question.

Mose Bishop, having been duly sworn, was examined and testified as follows:

Direct examination:

By Lawyer Hall:

Q. Give us your address.

A. 860 Erskine Street, Montgomery, Alabama.

Q. You are a colored man?

A. I am.

Q. How old are you?
A. I am forty-four years old.
Q. Forty-four?
A. Yes, sir.
Q. What is your occupation?
A. I am a housekeeper at the Veterans' Hospital.
Q. Is that in the City of Montgomery?
A. Yes, sir, Perry Hill Road.
Q. Do you live here?
A. I live here about fifteen years.
Q. Did you go to school here?
A. No, sir, Autauga County.
Q. You are from Autauga County?
A. Yes, sir.
Q. Where?
A. Autaugiville.
Q. Did you go to school over there?
A. I did.
Q. How far did you go?
A. Completed the ninth grade.
Q. You can read and write the English language?
[fol. 178] A. Yes, sir.
Q. Have you ever been convicted of a crime against the State of Alabama in the County of Montgomery?
A. No, sir.
Q. No, crime at all?
A. No, sir.
Q. Do you own any property?
A. I do.
Q. Are you a voter?
A. I am.
Q. Have you ever had any serious, disabling, crippling disease such as might hinder your free movement?
A. No, sir.
Q. Have you ever served as a juror in Montgomery County?
A. Been called but never served.
Q. How many time have you been called?
A. One.
Q. One time?
A. Yes, sir.
Q. When was that?
A. This last month. I just disremember the——

By the Court:

Q. Last month or last March?
A. Last month.

By Lawyer Hall:

Q. That would be in April?
A. That is right.
Q. That is the first time you had been called?
A. The first time I had been called.
Q. You didn't serve as a juror?
A. No, sir.
Q. Do you know how many negroes were on that particular venire when you were called?
A. There was three of us.
Q. Do you know if any of the three served?
[fol. 179] A. No, sir, didn't even one of them serve.
Q. Do you know how many persons were on that venire at that time?
A. Frankly speaking, I don't know.
Q. Do you have any judgment as to the number of persons on that venire?
A. No, sir, I don't. Both sides were full. I know that.
Q. You say there were three negroes?
A. Yes, sir.
Q. None of them served as a juror?
A. No, sir.
Q. Do you know of any negroes serving as jurors in this county?
A. So far I don't know any served. I don't know.
Q. You know some have been called; is that right?
A. That is right.
Q. You don't know any who have served?
A. No, sir.
Q. Have you any brothers?
A. No, sir.
Q. Any cousins living in this county?
A. No cousins, no more than distant cousins. My mother lives here, and my wife, that is all.

Cross-examination:

By Mr. Garrett:

Q. You said both sides were full, talking about the jury in April. You are referring to the two jury boxes on each side of the Court Room?

A. That is right.

Q. Twelve seat on each side?

A. Yes, sir.

Q. Twenty four seats altogether?

A. Yes, sir.

Q. You were one of three colored people summoned on that venire?

A. Yes, sir.

Q. Did you ask to be excused?

A. No, sir.

Q. Did either one of the other two men ask to be excused?

A. No, sir.

[fol. 180] Q. Did either of them actually serve on a jury?

A. No, sir.

Q. Did one of the lawyers on either side of the case strike you off?

A. I don't know who struck me off.

Q. You were not allowed to serve having been struck off by the lawyers in the case?

A. Yes, sir.

Q. Are you a voter?

A. Yes, sir.

Q. Are you a member of the National Association for the Advancement of Colored People?

A. I am.

Redirect examination.

By Lawyer Hall:

Q. Are you sure you were subpoenaed as a juror or as a witness at the last term of Court?

A. A juror.

Q. You are certain of that?

A. I am sure.

Q. Were you subpoenaed as a witness also?

A. No, I was subpoenaed as a witness also.

WALTER P. BRASWELL, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. What is your address?
A. 3273 Liles Court.
Q. Here in the City of Montgomery?
A. Yes.
Q. You are a colored man, are you not?
A. Yes.
Q. What is your age?
A. Forty-six.
Q. What is your occupation?
[fol. 181] A. Pullman porter.
Q. Do you work on a regular run or extra board?
A. Regular shift.
Q. What is your run?
A. To Chicago.
Q. How long do you work, how many days a week out of Montgomery?
A. Three and one half day shift, three days, with the third day in Chicago.
Q. Are you here in Montgomery three and one half days?
A. Yes, sir.
Q. Is your headquarters here?
A. Yes, sir.
Q. How long have you been a Pullman porter?
A. Twenty-seven years.
Q. How old are you?
A. I just told you.
Q. I don't remember.
A. Forty-six.
Q. Are you a registered voter?
A. Yes, I am.
Q. Do you own any property here in Montgomery?
A. Buying it.
Q. Do you belong to any fraternal organizations?
A. Yes.
Q. Which?
A. Mason.

Q. You are a Mason?
A. Yes.
Q. Are you an Elk?
A. No Elk.
Q. Do you belong to the National Association for the Advancement of Colored People?
A. Yes.
Q. Have you ever been summoned as a juror in this county?
A. No, I have not.
[fol. 182] Q. Have you any brothers here?
A. Yes.
Q. How many?
A. One.
Q. How old is he?
A. About forty-nine.
Q. What is his occupation?
A. Pullman porter.
Q. Is he on a regular trip?
A. Yes.
Q. The same as you?
A. Yes.
Q. What is his run?
A. To Chicago.
Q. Same as yours?
A. Same as mine.
Q. Has he been a Pullman porter approximately as long as you have?
A. Yes.
Q. Do you know whether he has ever been summoned as a juror in this county?
A. No, he hasn't.
Q. Are you a native of Montgomery?
A. No, I am not.
Q. Where were you born?
A. Macon, Georgia.
Q. How long have you lived in Montgomery?
A. Twenty-eight years.
Q. Have you ever been convicted of a serious crime?
A. No, I have not.
Q. No crime at all?
A. No.

Q. Has your brother ever been convicted of any crime?
A. No.
Q. Has either of you ever suffered a serious, disfiguring disease, disabling disease such as may hinder your free movement?
[fol. 183] A. No, sir.
Q. Neither of you have served as jurors?
A. No.
Q. Your brother makes his headquarters in Montgomery?
A. Yes, sir.
Q. Do you know any negro who has served as a juror in this county?
A. I don't believe so.

Cross-examination.

By Mr. Garrett:

Q. Don't know any colored man or men who have served on the jury in Montgomery County?
A. I don't believe so.
Q. You have been here twenty-eight years?
A. Yes, sir.
Q. Have you talked about that subject with a number of your acquaintances?
A. No, I have not.
Q. You haven't had occasion to come to Court to see who was serving on the Jury?
A. No, I haven't.
Q. You just never took occasion to inquire about it?
A. No.
Q. Have you or your brother been on the Federal Jury?
A. No, we haven't.
Q. Are you a voter?
A. Yes.

NELSON E. HENRY, JR., having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name and address.
A. Nelson E. Henry, Jr., 410 Auburn Street, Montgomery.
Q. That is 410 Auburn Street?
A. That is right.
[fol. 184] Q. And this address is here in Montgomery?
A. Right.
Q. What is your occupation?
A. Bricklayer.
Q. How old are you?
A. Thirty-four.
Q. You are a colored man, are you?
A. Right.
Q. Are you a voter?
A. I am.
Q. Have you been convicted of any crime?
A. No.
Q. You say no?
A. No.
Q. Have you ever been afflicted with any serious, disabling, disfiguring disease such as might hinder your free movement or make you objectionable to other persons?
A. I don't know of anything.
Q. Did you go to school here in Montgomery?
A. I have been here to school lately, and did some college work here.
Q. Where did you go to high school?
A. My high school work was down at Atmore, Evergreen, and Texarkana.
Q. You were graduated from high school?
A. Yes, sir.
Q. You have done some college work?
A. Yes, sir.
Q. How much?
A. About one hundred hours.

Q. That would be the equivalent of two years of college work?

A. Yes.

Q. You are regularly employed as a bricklayer in the City of Montgomery?

A. That is right.

Q. Have you ever served as a juror?

A. No.

Q. In this county, Montgomery County?

[fol. 185] A. No.

Q. Ever been summoned as a juror?

A. Never.

Q. Do you have a wide acquaintance among negroes in Montgomery County?

A. I have, some of both races.

Q. Do you belong to some organizations here in this county?

A. Quite a few.

Q. Will you name some of them for us?

A. The Mt. Zion Primitive Baptist Church; A. Peters Lodge; Montgomery County Safety Council; the Central Labor Union, brick masons local union here which is affiliated with the American Federation of Labor; and I belong to the Citizens Coordinating Committee.

Q. What is that?

A. It is a group of organizations, coordinating organizations.

Q. Is it a civic organization?

A. That is right.

Q. For civic betterment?

A. Yes, sir.

Q. Not a social club?

A. No, sir. And I belong to the Progressive Democrats.

Q. I expect that is a political organization?

A. Yes.

Q. You never have been called on for jury service in Montgomery County?

A. Never have.

Q. Do you know of anybody who has, any negro?

A. I do not.

Q. Have you any brothers, cousins, or relatives living in Montgomery?

A. I have a brother and one sister.

Q. How old is he?

A. He is about forty-one.

Q. Your brother is about forty-one?

A. Right.

Q. What is his occupation?

A. He is curator for the science department of Alabama State College.

[fol. 186] Q. What is his name?

A. Alfred C. Henry.

Q. He lives in Montgomery too?

A. Yes, sir.

Q. How long has he lived here?

A. He has been at the college about eleven years.

Q. Does he claim this his residence?

A. Yes, Montgomery is his residence.

Q. Do you know if he has every served on a jury in this county?

A. He has never been called.

Q. He never has been called to jury duty?

A. No, sir.

Cross examination.

By the Assistant Solicitor:

Q. Have you ever been in criminal court in this Court House during a criminal trial?

A. No.

Q. So you don't know whether negroes were on the jury, or not, do you?

A. I don't have any occasion to see.

Q. You have no personal knowledge of whether they serve on a jury, have you?

A. No, that is right.

Q. Are you a member of the National Association for the Advancement of Colored People?

A. I am not.

WILLIAM J. KENT, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Give us your address.
A. 1522 South Holt Street.
Q. Montgomery County, Alabama?
A. Montgomery, Alabama.
Q. You are a colored man?
[fol. 187] A. Sure.
Q. What is your occupation?
A. Plasterer.
Q. Are you regularly employed as a plasterer here in Montgomery?
A. I am.
Q. How old are you?
A. Thirty-six years old.
Q. Are you a native of Montgomery?
A. I am not a native of Montgomery; my native home is in Escambia County.
Q. How long have you been in Montgomery?
A. Approximately fourteen years.
Q. Did you go to school here in Montgomery?
A. I went to the Alabama State College.
Q. You graduated from college at that time, did you?
A. I finished four years college training at Alabama State College.
Q. Do you own some property here?
A. I do own property here.
Q. Are you a voter?
A. I am a voter.
Q. Do you belong to any civic or religious or fraternal organizations here in the city?
A. I belong to a fraternal organization.
Q. What is that?
A. It is a fraternity connected with the school, Kappa Alpha Phi College Fraternity.
Q. Do you belong to any fraternal groups, Masons, and so forth?
A. No, sir, I am not a member.

Q. Your only fraternal affiliation is a Greek Letter fraternity?

A. Yes, sir.

Q. Do you belong to a church?

A. I do.

Q. What church?

A. The Catholic City of St. Jude.

Q. The City of St. Jude, that is your church affiliation, is it?

A. Yes, sir.

[fol. 188] Q. What about civic associations, do you belon gto any civic groups?

A. No, not at the present time.

Q. Are you a contractor, or do you work for some one?

A. I work under a contractor, a plastering contractor, sub-contracting.

Q. You are his sub, you don't bid on jobs yourself, you work for him?

A. That is right.

Q. Have you ever been convicted of any crime?

A. No, I have not.

Q. Have you ever had any serious, disabling disease?

A. No, I have not.

Q. You can read and write the English language, of course.

A. Of course.

Q. Have you ever served on a jury in Montgomery County?

A. I never served on a jury in Montgomery County.

Q. Have you ever been summoned for jury duty in Montgomery County?

A. I have never been summoned for jury duty in Montgomery County.

Q. Have you any brothers or male relatives in Montgomery County?

A. I don't have any presently.

Q. Have you a fairly wide acquaintance among negroes here in this county?

A. I have a wide acquaintance because of my connection with many of the negroes.

Q. Do you know any negro who ever served on a jury in this county?

A. At present I don't.

Q. Have you ever known of one?
A. I have only heard of them.
Q. You heard of one, or what did you say?
A. I only heard of one.
Q. One?
A. Yes, sir.
Q. You don't know of another?
A. I don't know of another.
Q. And you testify you have never been called for jury service?
A. I have never been called.
Q. Are you affiliated with the National Association for the Advancement of Colored People?
[fol. 189] A. I am.
Q. You are a member of that organization?
A. I am

Cross-examination:

By Mr. Garrett:

Q. What contractor do you work for?
A. I work for the firm of Roy Stewart, out of Macon, Georgia, subcontractors for Blount Brothers, Maxwell Field.
Q. You travel around on jobs?
A. I do.
Q. And sub-contractors are called on jobs all over the country?
A. Certainly, working away from home most of the time.
Q. You are away traveling?
A. Sure.
Q. On the job?
A. I am.
Q. What percentage of time are you out of Montgomery on these jobs, have you a judgment as to that?
A. I am out approximately fifty per cent of the time, but never change my home address.
Q. But you are gone, according to your own estimate, at least fifty per cent of the time?
A. At least fifty per cent of the time, and practically every week-end I come back here. When I am out of town

most of the time it is a short distance so I can get home on week-ends.

Q. Most of it, when you are talking about fifty per cent in Montgomery, that is on week-ends, isn't it?

A. Not necessarily fifty per cent working time is in Montgomery.

Q. You have only heard of one man to serve on the jury, one colored man?

A. I didn't specify one man.

Q. That was the question asked you. I want to get that cleared up. You only heard of one man setting on the jury in Montgomery County?

A. I said I heard of one being on the jury. I never testified as one particular person by name. I have only heard of one being on the jury.

[fol. 190] Q. In other words, you just heard of one man being on the jury, one colored man?

A. Sure.

Q. Do you know Roscoe A. Williams, a colored man?

A. I heard his name called out for the jury today.

Q. You heard his name called out?

A. Sure. I know him very well.

Q. Do you know Walter Nesbitt, a colored man?

A. I know of Walter Nesbitt.

Q. Do you know F. L. Lowe, a colored man?

A. Sure, I know F. L. Lowe.

Q. Did you see him in Court this morning?

A. I saw him first here today.

Q. Have you ever been in Court before?

A. I have never been in Court before.

Q. Then you came to Court today and you saw how many colored men on the jury?

A. When I came in I saw Roscoe Williams and Fred L. Lowe being here today.

Q. Were they the only ones?

A. And Mr. DeWitt today. You asked me if I had ever been here before. This is my first time in Court and I heard all of those called.

Q. You just never had occasion to know whether they were on the jury, or not, until today, did you?

A. I definitely cannot tell you whether he served or

didn't. I don't know what the court proceeding was they tried here.

Q. Didn't you see DeWitt go into the other Court Room on a capital case and actually sit on the jury at that time?

A. I know he was sent over there, and he was summoned for jury service, and I saw him leave here.

Q. After being selected was he one of the twelve?

A. I was sitting right here and didn't see him serve. I haven't seen him serve.

Q. You have never been in a Montgomery County Court Room before according to your testimony?

[fol. 191] A. That is right.

Q. You have no reason to know whether colored people served on the jury, or not; until this morning?

A. That is right.

The Court: We will adjourn until Tuesday. Does that close your case, except for rebuttal? That is, as far as your motion to quash is concerned.

Lawyer Hall: I don't want to say I close. I assume that we do.

DEFENDANT RESTS

The Court: The defendant rests as far as you now know?

Lawyer Hall: Yes, sir.

The Court: The defendant has no more witnesses on Direct Examination. You have the right if the occasion arises to put in any rebuttal. With that understanding, the Court now stands in recess until nine o'clock tomorrow morning.

Seven o'clock P. M.

Adjourned until Tuesday, May 31, 1955, at 9 o'clock A. M.

[fol. 191A] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 192] In Circuit Court of Montgomery County

[Title omitted]

Before Hon. James J. Carter, Special Judge

Transcript of Proceedings—May 31, 1955

Evidence on Behalf of the State on Defendant's Motion to Quash the Venire

The Assistant Solicitor: We would like to introduce for the sake of the record the pertinent statutes on the Jury Commission and the qualifications of jurors. With agreement of counsel for the defendant, we will not read them, but state them and ask the reporter to copy these sections of the Code.

Lawyer Billingsley: I wonder if in your agreement this includes the Special Acts upon which this Jury Commission operates?

The Assistant Solicitor: No, because we don't consider it is particularly pertinent.

[fol. 193] Lawyer Billingsley: Naturally, from your point of view. You have a system here in Montgomery County that you don't find in most of the counties. We feel if the pertinent Sections of Title 30, Sections 8 to 29, are introduced without the special Acts upon which this Jury Commission operates, the special Acts should also be introduced as part of the evidence so the record may clearly show what the status of the Jury Commission is in this county.

The Assistant Solicitor: As I understand the Special Act, the only difference which would affect this case is that it sets up different people who compose the Commission.

The Court: I understand it is a General Act with local application. I see no objection. If you want to introduce that the Court will certainly allow you the privilege of introducing it into the record. If you will indicate what you want to introduce it can be spread on the record. The Court is familiar with the Sections including the Special Act. If you want them in the Court will allow you that privilege.

Lawyer Billingsley: If the State will agree to it, we certainly agree to introducing it.

The Court: I think you and the Solicitor can agree on the Act applicable in this case. You can simply indicate what you want to offer and the reporter will copy it on the record at this point.

Lawyer Gray: 1923 General Laws, page 260; and amended by the Act of 1939 and the Act of 1950.

The Court: I would say this is a different amendment, but they will be copied in the record afterwards if agreeable to you.

The Assistant Solicitor: Yes, sir. At this time we would like to introduce and have copied into the record Title 30, Sections 3, 20, 21, 24 and 29 of the Code of Alabama, 1940.

The Court: All right.

[fol. 194] TITLE 30

SECTION 3.

Persons Exempt From Jury Duty.—The following persons are exempt from jury duty, unless by their own consent: Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of the state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators, when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such, regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of their duties; the superintendents, physicians, and all regular employees of the Bryce hospital in Tusca-

loosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such.

SECTION 20.

Jury Roll and Cards.—The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the jury commis- [fol. 195] sion shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given. Upon the completion of the roll the jury commission shall cause to be prepared plain white cards all of the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the person whose name has been placed on the jury roll; writing or printing but one person's name, occupation, place of residence and of business on each card. These cards shall be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe or vault in the office of the probate judge, and if there be none in that office, the jury commission shall deposit it in any safe or vault in the court house to be designated on the minutes of the commission; and one of said keys thereof shall be kept by the president of the jury commission. The other of said keys shall be kept by a judge of a court of record having juries, other than the probate or circuit court, and in counties having no such court then by the judge of the circuit court, for the sole use of the judges of the courts of said county needing jurors. The jury roll shall be kept securely and for the use of the jury commission exclusively. It shall not be inspected by anyone except the members of the commission or by the clerk of the

commission upon the authority of the commission, unless under an order of the judge of the circuit court or other court of record having jurisdiction.

SECTION 21.

QUALIFICATIONS OF PERSONS ON JURY ROLL.—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been con- [fol. 196] victed of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so.

SECTION 24.

Duty Of Commission To Fill Jury Roll; Procedure; Etc.—The jury commission is charged with the duty of seeing that the names of every person possessing the qualifications prescribed in this chapter to serve as a juror and not exempted by law from jury duty, is placed on the jury roll and in the jury box. The jury commission must not allow initials only to be used for a juror's name but one full Christian name or given name shall in every case be used and in case there are two or more persons of the same or similar name, the name by which he is commonly distinguished from the other persons of the same or similar name shall also be entered as well as his true name. The jury commission shall require the clerk of the commission to scan the registration lists, the lists returned to the tax assessor, any city directories, telephone directories and any and every other source of information from which he may obtain information, and to visit every precinct at least once a year to enable the jury commission to properly

perform the duties required of it by this chapter. In counties having a population of more than one hundred and eighteen thousand and less than three hundred thousand, according to the last or any subsequent federal census, the clerk of the jury commission shall be allowed an amount not to exceed fifty dollars per calendar year to defray his expenses in the visiting of these precincts, said sum or so much thereof as is necessary to be paid out of the respective county treasury upon the order of the president of the commission.

[fol. 197] SECTION 29.

Cost Of Summoning Persons Disqualified, Etc., To Be Taxed Against Clerk Or Commissioners.—Whenever it appears to the court that a person's name has been placed upon a jury roll, who did not, at the time he was enrolled, possess the qualifications required by law, the court may in its discretion, upon excusing the person from service, tax the cost of summoning the person and his attendance and excusing him against the clerk of the commission, or against any one or more of the members.

ACT OF SEPTEMBER 6, 1923

To create and establish a Board of Jury Supervisors in every county in this State which now have or which may hereafter have a population of as much as seventy-five thousand and not more than ninety-five thousand people, according to the last federal decennial census, or any such census, which may hereafter be taken; to provide that the circuit judges, the judge of probate, the sheriff and the clerk of the circuit court of all such counties shall constitute the Board of Jury Supervisors, and to confer upon them all the jurisdiction and all the power and authority which is now or which may hereafter be by law vested in jury commissioners in this State; to provide that they shall perform and discharge all the duties of jury commissioners, without compensation, except as provided by this Act; to authorize them to elect one of their number president of such board of Jury Supervisors, and to provide that the clerk of the circuit court of all such counties shall be ex-officio clerk of such board of Jury Supervisors; to fix his salary as such clerk, the manner of its payment, and to abolish the jury commission and the clerk thereof in all such counties.

Be It Enacted by the Legislature of Alabama:

Section 1. That in all counties of this State which now have or which may hereafter have a population of as much as seventy-five thousand and not more than ninety-five thousand people, according to the last federal decennial census, or any such census which may hereafter be taken, there is hereby created and established a Board of Jury Supervisors which shall be composed of the circuit judges, [fol. 198] the *the* judge of probate, the sheriff and the clerk of the circuit court of all such counties.

Section 2. That the Board of Jury Supervisors created and established in Section 1 of this A.. shall have all the power, authority and jurisdiction which is now conferred by law or which may hereafter be conferred by law upon jury commissioners in this State. The members of such Board of Jury Supervisors, except as hereinafter provided, shall perform and discharge their duties without compensation.

Section 3. The circuit judges, the judge of probate, the sheriff and the clerk of the circuit court of all counties in this State which now have or which may hereafter have a population of as much as seventy-five thousand and not more than ninety-five thousand people, according to the last Federal decennial census, or any such census which may hereafter be taken, shall, within ten days after the approval of this Act by the Governor meet and organize as such Board of Jury Supervisors by electing one of their number President of the Board of Jury Supervisors, and shall thereupon begin the discharge of the duties imposed upon and required of them by this Act. All three of them shall be a quorum for the transaction of any and all business.

Section 4. The clerk of the circuit court of such counties shall be ex-officio clerk of the Board of Jury Supervisors in such counties, and shall take the oath and perform all the duties now required by law of clerks of jury commissioners in this State. Said clerk of the Board of Jury Supervisors shall receive for his services as such the sum of nine hundred dollars per year, payable in twelve equal monthly installments, out of the treasury of such county upon the order of the President of the Board of Jury Supervisors.

Section 5. Upon the organization of the judges of the circuit court, the judge of probate, the sheriff, and the clerk of the circuit court as the Board of Jury Supervisors, the persons now acting as jury commissioners in said counties shall deliver to the Board of Jury Supervisors the jury roll, all books, papers, cards, and other records of such present jury commission.

Section 6. That the jury commission, and the clerk thereof, in all counties in this State which now have or which [fol. 199] may hereafter have a population of as much as seventy-five thousand and not more than ninety-five thousand people, according to the last federal decennial census, or any such census which may hereafter be taken, be and such jury commission and the clerk thereof are hereby abolished.

Section 7. All laws and parts of laws, general, local or special, in conflict with the provisions of this Act be and the same are hereby expressly repealed.

Section 8. This Act shall take effect upon its approval by the Governor.

Approved Sept. 6, 1923.

ACT OF MARCH 8, 1939

No. 118

To create and establish a Board of Jury Supervisors in Montgomery County, Alabama, to provide that the Circuit Judges, the Judge of Probate, the Sheriff, and the Clerk of the Circuit Court of Montgomery County shall constitute the Board of Jury Supervisors and to confer upon them all the jurisdiction and all the powers and authority which is now or which may hereafter be by law vested in Jury Boards and Jury Commissioners in this State; to provide that they shall perform and discharge all the duties of Jury Boards and Jury Commissioners without compensation, except as provided by this Act; to authorize them to elect one of their number President of such Board of Jury Supervisors, and to provide that the Clerk of the Circuit Court of Montgomery County shall be ex-officio clerk of such Board of Jury Supervisors; to fix his salary

as such clerk, the manner of its payment, and to provide for the delivery to this Board of the papers and records of any former Board of Jury Supervisors, Jury Board or Jury Commission of Montgomery County.

Be it enacted by the Legislature of Alabama:

Section 1. That in Montgomery County, Alabama, there is hereby created and established a Board of Jury Supervisors which shall be composed of the Circuit Judges, the Judge of Probate, the Sheriff and the Clerk of the Circuit Court of said County.

Section 2. That the Board of Jury Supervisors created and established in Section 1 of this Act shall have all the power, authority and jurisdiction which is now conferred [fol. 200] by law or which may hereafter be conferred by law upon jury boards and jury commissions in this State. The members of such Board of Jury Supervisors, except as hereinafter provided, shall perform and discharge their duties without compensation.

Section 3. The Circuit Judges, the Judge of Probate, the Sheriff and the Clerk of the Circuit Court of Montgomery County, Alabama, shall within ten days after the approval of this Act by the Governor, or this Act becoming a law, meet and organize as such Board of Jury Supervisors by electing one of their number President of the Board of Jury Supervisors, and shall thereupon begin the discharge of the duties imposed upon and required of them by this Act. Any three of them shall be a quorum for the transaction of any and all business.

Section 4. The Clerk of the Circuit Court of Montgomery County shall be ex-officio Clerk of the Board of Jury Supervisors in such county, and shall take the oath and perform all the duties in this State. Said Clerk of the Board of Jury Supervisors shall receive for his services as such the sum of Twelve Hundred Dollars per year, payable in twelve equal monthly installments, out of the treasury of such county upon the order of the President of the Board of Jury Supervisors.

Section 5. Upon the organization of the Judges of the Circuit Court, the Judge of Probate, the Sheriff and the Clerk of the Circuit Court, as the Board of Jury Supervisors, the persons then or theretofore acting as the Board

of Jury Supervisors, Jury Board or Jury Commission in Montgomery County, Alabama, shall deliver to the Board of Jury Supervisors created herein, the jury roll, all books, papers, cards, and other records of such Board of Jury Supervisors, Jury Board or Jury Commission.

Section 6. Should any section of part of this Act be declared invalid or unconstitutional, this shall not affect the balance of the Act.

Section 7. All laws and parts of law, general, local or special, in conflict with the provisions of this Act be and the same are hereby expressly repealed.

[fol. 201] Section 8. This Act shall take effect immediately upon its becoming a law.

Approved March 8, 1939.

ACT OF MAY 23, 1951

Act No. 45

Prescribing the duties of the jury commission of any county having a population of not less than 140,000 nor more than 400,000 inhabitants relative to compiling and keeping the jury roll.

Be it enacted by the Legislature of Alabama:

Sec. 1. The jury commission of any county having a population of not less than 140,000 nor more than 400,000 inhabitants, according to the last or any subsequent federal census, shall meet in the court house at the county seat annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possesses the qualifications of a juror as prescribed by law and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and the jury commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given. Upon the completion of the roll the jury commission shall cause to be prepared plain white cards all of

the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the person whose name has been placed on the jury roll, writing or printing but one person's name, occupation, place of residence and place of business on each card. These cards shall be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe place or vault in the office of the probate judge, and if there be none in that office, the jury commission shall deposit it in any safe place or vault in the court house to be designated on the minutes of the commission; and one of said keys thereof shall be kept by the president of the jury commission. The other of said keys shall be kept by a judge of a court of record having juries, other than the probate or circuit court, and in counties having no such court then by the judge of the circuit [fol. 202] court, for the sole use of the judges of the courts of said county needing jurors. The jury roll shall be kept securely and for the use of the jury commission exclusively. It shall not be inspected by any one except the members of the commission or by the clerk of the commission upon the authority of the commission, unless under an order of the judge of the circuit court or other court of record having jurisdiction.

Sec. 2. All laws or parts of laws which conflict with this Act are repealed.

Sec. 3. This Act shall become effective immediately upon its passing and approval by the Governor, or upon its otherwise becoming a law.

Approved May 23, 1951.

The Assistant Solicitor: The State's first witness is Mr. Thetford.

William F. Thetford, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Garrett:

Q. You are Mr. William F. Thetford?

A. That is right.

Q. You are the Circuit Solicitor of this county?

A. I am the Circuit Solicitor of the Fifteenth Judicial Circuit of Alabama, which is Montgomery County.

Q. How long have you been Circuit Solicitor?

A. Since January, 1951.

Q. Are you a member of the Jury Commission?

A. No.

Q. Will you detail for the record your duties as Circuit Solicitor for this county?

A. I am the prosecuting attorney of Montgomery County.

Q. As such what are your duties?

[fol. 203] A. To prosecute all criminal cases in this county, to present evidence before Grand Juries, conduct investigations incident to prosecutions.

Q. Are you familiar with the matter of selecting juries, both the Grand Juries and the petit juries of Montgomery County?

A. I am.

Q. Now, for the record, detail the manner of selecting of Grand Juries.

A. Yes, the Grand Juries are selected from a panel of fifty names. Now, the way it operates is this: that Judge Carter ordinarily, he being the presiding criminal judge of this judicial circuit—will draw in open court a list of fifty names from the jury box, the box up here being a tin box, a locked box. (Indicating) He draws that list of fifty names.

Q. Is that in the presence of everybody?

A. Yes, sir, it is in open court. Thereafter the list is made up by the Clerk, the subpoenas for the jury service are given to the Sheriff, and on the first day of the Grand Jury those jurors who have been served, and who haven't been excused, assemble in the Court Room; the Judge then asks if there are any excuses from service, and after the excuses have been heard and acted on the remaining names are placed in a hat, and in the presence of every one in the Court Room, in the presence of the Grand Jury and witnesses, the eighteen names are pulled from the hat. The eighteen names so pulled constitute a Grand Jury.

Q. Detail the selection of a petit jury.

A. Petit juries in all cases except capital cases are selected ordinarily in much the same manner. A list of fifty names—we ordinarily operate with a fifty name panel—is

drawn in open court. Now, in civil cases Judge Jones ordinarily draws those names, he being the presiding Judge of this Circuit and generally in charge of the civil court. For petit juries in criminal cases Judge Carter ordinarily draws out a list of fifty names; they are certified, a list made, and subpoenas issued by the Clerk's office, served by the Sheriff, and on the first day of Court those who have been served assemble here and excuses are heard, listened to by the Judge, and those who are not excused are the petit jury for that week. Now, in capital cases we have a [fol. 204] little different procedure. Your regular panel of fifty names is drawn, and by law the Judge is required to draw in open court in the presence of the defendant and his counsel an additional list of special jurors. That list varies, sometimes thirty, and for this term of Court fifty. He can draw as many as he thinks he needs, and on some occasions he has drawn twenty or thirty. They are drawn in open court after arraignment.

Q. In the presence of the defendants?

A. In the presence of the defendants.

Q. During the time you have been Circuit Solicitor how many Grand Juries have you been before?

A. Eighteen.

Q. Is it unusual for negroes to be on a Grand Jury in Montgomery County?

A. No.

Q. Have you had negroes on a Grand Jury fairly regularly?

Lawyer Billingsley: We are going to object to this line of questioning, the Solicitor suggesting the answer as to negroes or what not. We thing counsel would be more satisfied by letting his witness testify as to the exact number of members of the negro race that have been called to serve on the Grand Jury.

The Court: I sustain your objection. I thing the question was rather leading, and on that basis I sustain the objection.

By Mr. Garrett:

Q. Will you give the Court any opinion you might have, or any information relative to members of the negro race serving on Grand Juries in Montgomery County.

A. Well, we have had members of the negro race serving on Grand Juries in every year.

Lawyer Billingsley: I am going to object to that.

The Court: I overrule your objection. Yesterday I recall you asking many negro witnesses the question whether they had ever seen negroes serving on a Grand Jury or petit juries. The question he is now being asked is similar and identical to the ones you asked yesterday.

[fol. 205] Lawyer Billingsley: We except to Your Honor's ruling.

The Court: The exception is granted for the defendant.

The Witness: There have been members of the negro race on enumerable panels. By panels I mean the group subpoenaed and who actually come here and qualify for Grand Jury duty. There have been actually members of the negro race serving on, I would say, over half, it is my best judgment, or possibly more, of our Grand Juries in the last four years.

Q. Will you give the Court any estimate as to the number of negroes serving on a Grand Jury?

A. The most we ever had was three. I believe it was in July, 1954, the Grand Jury of July, 1954, we had three who actually served as Grand Jurors.

Q. That is three out of eighteen?

A. Three out of eighteen. Whether there were more on the panel, I don't remember.

Q. There have been some allegations or questions to the effect that some people, that negroes were called for service and that there was some practice to eliminate them and not have them serve on the Grand Jury. Do you know of any practice along that line?

A. No, there is no practice along that line. If they are on the panel their names go in the hat. If their names are drawn out of the hat they serve.

Q. Do you know any members of the petit jury who were excluded by some agreement when striking the jury?

A. No. I tried three cases last week with two negroes on the jury.

Q. Going to the petit jury in criminal cases again, would you give the Court any opinion you might have as to the number of members of the negro race serving on petit juries during the years you have been Circuit Solicitor?

A. We have very few panels of petit jurors that don't contain some negroes.

Q. How long do you hold a jury panel, for the record?

A. The jury panel is composed of those subpoenaed to appear, subpoenaed as jurors to try cases for one week.

[fol. 206] Q. You never had any panels during the years you have been Circuit Solicitor where there haven't been some negroes here?

A. That is true.

Q. Do they usually serve in the trial of cases when on the panel?

A. Sometimes.

Q. If they are on the panel and qualify, they do serve unless one side or the other strikes them?

A. Let me put it this way, if I may. We have two ways of actually getting a trial jury. You might get a trial jury simply by going up to boxes, and if the attorneys agree, they will take a jury on the left side of the Court Room, or the jury on the right side of the Court Room, then that becomes the trial jury. The defendant has a right to demand a struck jury now, if the defendant demands a struck jury, then all the names on the venire who are not trying some other case, a minimum of twenty-four, in non capital cases, and a minimum of thirty in capital cases, are qualified for the trial of a particular case, and thereupon the State strikes first, the defendant strikes twice, and so on until twelve names are left, and that becomes the trial jury.

Q. Is that the only way they qualify for a particular case, the State has one strike, the defendant has two, until you get down to twelve names?

A. That is right.

Q. And those twelve try the case?

A. Those twelve are the trial jury.

Q. During your years as Circuit Solicitor have you had enumerable cases — there were negroes among the twelve left to try the case?

A. Yes.

Q. Who usually eliminates a negro on the panel when striking the jury, the defendant or the State?

A. The defendant.

Q. What percentage, in your judgment, of criminal cases involve negro defendants in this county?

A. Eight per cent, eighty to ninety per cent.

Q. Do the lawyers representing negro defendants strike negroes from the trial jury?

[fol. 207] Lawyer Billingsley: That is objected to as leading and irrelevant, incompetent and immaterial.

The Court: Overrule your objection on the ground your motion alleges a systematic discrimination against the selection of negroes for trial of cases.

Lawyer Billingsley: The right to strike a juror has nothing to do with the allegations set up in the motion to quash the indictment, and it seems all of the evidence which is being presented here is simply hearsay and preliminary evidence.

The Court: I am overruling your objection on the ground the Solicitor, as Solicitor, is the man who actually participates in it.

Lawyer Billingsley: We ask for an exception.

The Court: An exception is granted the defendant.

(Previous question repeated as follows: "Q. Do the lawyers representing negro defendants strike negroes from the trial jury?")

The Witness: Ordinarily, yes, sir.

By Mr. Garrett:

Q. You have known that to happen?

A. I have.

Q. And do the negroes have counsel in the trial of the cases?

A. Yes.

Q. Any agreement or agreements of any kind with the State that all negroes will be struck from the trial jury?

A. Not in this jurisdiction.

Q. Have you during your years as Circuit Solicitor prosecuted white defendants with negroes on the trial jury trying the case?

A. Oh yes, sir.

Q. Have you prosecuted capital cases of white defendants with negroes on the jury trying the case?

A. Yes.

Q. In this county?

A. In this county.

[fol. 208] Q. Do you know how many voters we have on the poll list in Montgomery County?

A. Yes, sir, I do. We have 26,323 voters.

Lawyer Hall: We would like the record to show Mr. Thetford is referring to something.

The Witness: My notes.

Lawyer Hall: We would like the record to show that. We have no objection to it. We want the record to show he doesn't know that, he has no knowledge without referring to those notes.

By Mr. Garrett:

Q. Referring to the notes, give the total number of registered voters in Montgomery County

A. The total number of registered voters in Montgomery County is 26,323.

Q. Of that number how many are white voters and how many negro voters?

A. 24,549 white voters and 1,774 negro voters.

Q. Now, has the number of negro voters increased year after year?

A. Yes, sir, in 1951, my best recollection is there were around between seven and eight hundred. It has doubled in the last few years.

Q. Do you know whether any steps have been taken to indicate the negro population on qualifications necessary to be a voter?

A. Yes, sir. There are two schools, one run at State Normal—I don't know whether it is run by State Normal, but it is run at State Normal—to help the negroes learn the necessary things to enable and to qualify as voters; and I have been told by a number of the members of the negro race there is a school also run at St. Judes for the same purpose.

Cross-examination.

By Lawyer Billingsley:

Q. You are Solicitor for Montgomery County?

A. I am Solicitor for the Fifteenth Judicial Circuit.

Q. Solicitor for the Fifteenth Judicial Circuit which is Montgomery County, Alabama, are you not?

A. That is right.

Q. I believe you testified on Direct Examination that you have been Solicitor of this county since 1951?

[fol. 209] A. That is right.

Q. You are also familiar with the composition of the Jury Commission of this county, are you not?

A. That is true.

Q. And Judge Walter B. Jones is a member of said Jury Commission; is that right?

A. That is correct.

Q. Is also President of the Jury Commission, or the Jury Supervisors?

A. What ever it is called, he is President of it.

Q. And Judge Eugene W. Carter is also a member of the Jury Commission of this county?

A. That is true.

Q. And Mr. John R. Matthews, the Clerk of this Court in this Circuit, is also a member of said Jury Commission; is that right?

A. That is true.

Q. And Mr. M. S. Butler, Sheriff of this county, is also a member of the Jury Commission?

A. That is true.

Q. Is that right?

A. That is true.

Q. The Probate Judge, the Honorable David E. Dunn, is also a member of the Jury Commission of this county; is that right?

A. That is true.

Q. All of them are officers, at least four are officers of this Court, the Circuit Court; is that right?

A. I don't know whether you would call the Sheriff an officer of the Court. I suppose he would be.

Q. He is considered as an official?

A. I don't know whether you would call him an official of the Court, or not.

Q. The Probate Judge is an officer of the Probate Court; is that right?

A. He is Probate Judge.

Q. All those persons are identified with the Fifteenth Judicial Circuit of Alabama; is that right?

A. No, definitely no. The Sheriff is Sheriff of Mont- [fol. 210] gomery County, he is not Sheriff of the judicial circuit. The Clerk is a Clerk of the Circuit Court of Montgomery County. He is not Clerk of the Fifteenth Judicial Circuit.

Q. Which of those five members do you consider being officers of the Fifteenth Judicial Circuit?

A. The two Circuit Judges.

Q. None of them but the two Circuit Judges and the Clerk of the Fifteenth Judicial Circuit?

A. I didn't say the Clerk of the Fifteenth Judicial Circuit.

Q. The Clerk of this Court?

A. The Clerk of the Circuit Court of Montgomery County.

Q. Except those five persons there is not a possibility of any other person serving on the Jury Commission of this County unless he fills one of the offices of the Judge of the Fifteenth Judicial Circuit, is a Probate Judge of this County, is the Clerk of the Court of this County, and is the Sheriff of this County?

A. By statute the Jury Commission of Montgomery County is composed of the two Circuit Judges, the Clerk, the Sheriff, and the Probate Judge, and to answer that question is that what you asked?

Q. That is right. As a result of this statute it is not possible for any other resident and citizens of this county being a member of this Jury Commission?

Mr. Garrett: That is objected to.

The Court: The statute speaks for itself. The only members who constitute the Jury Supervisors of this county are the two Circuit Judges, the Clerk of the Circuit Court, the Probate Judge and Sheriff. They are the only members who by law can be the only members. The Court knows that, and I don't see any need of going into a lot of detail to prove that. And as a matter of fact, I think you have introduced into the record the statute, and the Court is perfectly familiar with the statute.

By Lawyer Billingsley:

Q. Were you the Solicitor of this Circuit on the 14th day of November, 1952?

A. Yes.

Q. Were you the Solicitor who presented the evidence [fol. 211] before the Grand Jury of this county in the case of the State of Alabama versus Jeremiah Reeves?

The Assistant Solicitor: We object to that. His motion is directed to the systematic exclusion of negroes. He is trying to open up the Grand Jury indictment of Jeremiah Reeves in 1952. Your Honor has ruled on the motion to quash the indictment, which has to do with the Grand Jury. This is not pertinent or pertaining to anything Mr. Thetford testified to.

The Court: Mr. Thetford is on Cross Examination. I am not going, of course, to open up the question of the previous indictment, for the purpose of testing his creditability on other testimony he gave, I am going to let him proceed with the Cross Examination.

The Assistant Solicitor: Are you going to permit him to disclose the evidence before the Grand Jury?

The Court: Absolutely not, and this Court well knows that matter cannot be disclosed any where.

(Previous question repeated as follows: "Q. Were you the Solicitor who presented the evidence before the Grand Jury of this County in the case of the State of Alabama versus Jeremiah Reeves?")

The Court: You asked him if he presented the evidence. That calls for a yes or no answer, whether he did, or didn't. The Solicitor can certainly answer whether he did, or didn't present it, or who did present it.

The Witness: I presented the evidence before the Grand Jury. I cannot be specific as to the date. It was in 1952.

By Lawyer Billingsley:

Q. In order to refresh your recollection, was it November 14, 1952?

A. I don't remember.

Q. You presented the evidence personally before the grand jury, did you?

A. Oh, yes.

Q. Were there any negroes on the Grand Jury that indicted Jeremiah Reeves, Junior?

A. I don't know for sure. My best judgment—I wouldn't know. My best judgment would be no.

Q. That is the case that you also tried; you tried this [fol. 212] case before an organized petit jury?

A. Oh, yes.

Q. Isn't it a fact there were no negroes on that petit jury?

A. Yes.

Q. That tried him?

A. There were negroes on the panel. That is what you asked, whether negroes on the petit jury? There were.

Q. Did any negroes serve on that petit jury?

A. There were negroes on the panel, but no negroes on the jury that tried him.

The Court: The witness has a right to answer the question in his own way. He has a right under the law to explain his answer.

The Witness: There were negroes on the panel, but no negroes on the jury that tried him.

By Lawyer Billingsley:

Q. How many negroes were there?

A. I don't know.

Q. Your best judgment?

A. I don't have a judgment.

Q. Would you say one?

A. I don't know. I remember there were negroes on there. In my best judgment there were more than one. I am not sure about it and I wouldn't swear to it.

Q. You would not recall the names of those negroes, would you?

A. No.

Q. Has Jeremiah Reeves been re-indicted in this Court?

A. No.

Q. Has he been re-arraigned?

A. No.

Q. This is the same case that was taken to the United States Supreme Court—is that right—the one we are trying now?

A. Yes.

Q. That case was reversed by the United States Supreme Court of America, was it not?

[fol. 213] A. Yes.

Q. And he is being tried on the same indictment as in that case?

A. That is right.

Q. I believe you testified—let me ask you this—before you became Circuit Solicitor were you a practicing attorney in this county?

A. I was.

Q. And how long had you been practicing?

A. I started practicing in 1935; I was gone five years during the war; resumed my practice in 1946.

Q. Resumed your practice in 1946?

A. Yes, sir.

Q. Now, during that time did you handle criminal cases?

A. Not after 1946.

Q. What type of cases did you deal in after 1946?

A. General practice.

Q. You just had a general practice?

A. Yes.

Q. You did have some criminal cases?

A. I think I tried a robbery case in 1946, and that is the last criminal case I tried until I was Solicitor. That is my best recollection.

Q. You tried cases before the war?

A. Yes.

Q. Were there any negroes on the jury?

A. I have very little recollection of them because I don't know.

Q. You just don't remember?

A. I don't remember.

Q. You testified since 1951 that there have been negroes serving on the Grand Juries of this county?

A. That is right. During 1951 and since 1951, put it that way, because I remember them on Grand Juries in 1951.

Q. Have you ever known a petit jury to have more negroes serving thereon than there were white people?

A. No.

Q. Have you ever known a petit jury in which there was one negro on it?

[fol. 214] A. Yes.

Q. And have you known petit juries in which there were as many as five negroes on the jury?

A. Yes.

Q. Can you remember what time to the best of your recollection?

A. I would say within the last two years probably.

Q. Within the last two years?

A. Within the last two years, or might have been three years ago.

Q. Do you remember the name of a single negro?

A. No.

Q. Do you have a wide acquaintainse among negroes in this county?

A. Fairly wide.

Q. How wide?

A. I couldn't answer that.

Q. In selecting the jury, petit juries in this county, I believe—petit jury like we have here today—I believe you have stated the defendant struck most of the negroes, or struck all of the negroes. What did you say?

A. Well, of course, it depends upon the type case you are trying. You ask generalities. It goes back to actually what kind of a case you are trying. We find this. A great many of our cases involve a negro charged with assaulting another negro with intent to murder. I think we will never find a defendant allowing a negro to serve in a case of that nature. We had a case yesterday in this Court in which a negro was accused of robbing another negro. I believe there were eight or nine negroes on the actual panel to be struck, and the defendant's lawyer struck all of them but one. I didn't strike any.

Q. You didn't strike any?

A. I did not.

Q. Have you ever had occasion to strike negroes on the panel?

A. Oh, yes.

Q. What criterion do you have in regard to striking negroes on the panel?

A. I could not answer that. It depends upon the individual case.

Q. Could you give some example of why you strike a negro?

[fol. 215] A. Some of the cases involve the assault or murder of a white man, and I don't think he would make a good juror in that particular case.

Q. You testify you have struck negroes because you feel they wouldn't make good jurors in that case?

A. That is right.

Q. Would you strike one simply because he is a negro?

A. No. We strike him because we don't think he should be on that particular case, or might lean a little more toward the defendant than some others on the venire.

Q. Naturally you make an investigation on every juror on the venire?

A. No.

Q. What criterion do you use to determine whether a negro would make a good jury man?

A. Sometimes we have personal knowledge of them and sometimes we have someone we know.

Q. If you don't?

A. Depends on intuition. We do that intuitively as far as getting a good jury. It happens a lot of times we just don't know anything about them and we rather strike them than take a chance on them.

Q. Generally you wouldn't know many of the negroes in this county, would you?

A. I admit I don't know many of the negroes in this county.

Q. You have no social experience and no lodge meetings together?

A. No, I don't.

Q. You don't go to the same church any of them go?

A. No.

Q. The very organization where you might have an opportunity to learn more about a man, you have never met him at church or had an opportunity to find out what type church member he was; is that right?

A. Well, I don't have that opportunity, no.

Q. Consequently, it is very difficult for you to really know, to better know a negro than you do a white person in the community?

A. I would say of the jury panel of one hundred jurors at this term of Court I know very, very few of them well.

Q. You don't have an opportunity to really know a negro [fol. 216] juror as you would a white juror?

The Assistant Solicitor: We object to that as repetition.

The Court: We have been over that two or three times. I don't see that any tactics so employed, whether by the State or defendant in a criminal case, has any bearing on a case of this kind, what is done by counsel to secure a particular juror. As a matter of fact, the law gives him undoubtedly that discretion——

Lawyer Billingsley: I would like to direct the attention of this Court the case of Hernandez versus the State of Texas, 347 United States, 475; 7423 Court, 667.

The Court: I *ah*ppened to be right there in the Supreme Court when that opinion was handed down. I am familiar with that case. I have it in my record. That case held any defendant is by reason of his color entitled to the members of his race upon any particular jury. That case further held members of a particular race may not be systematically discriminated against. That opinion there holding protective rights, isn't based on the facts testified to here, as to whether or not members of the negro race, because of their race and color, are arbitrarily, intentionally and systematically excluded from jury service or discriminated against in selection of persons for jury duty. That opinion was rendered by Chief Justice Warren. I was sitting in Court and listening to him when he read the opinion and I am thoroughly familiar with it.

Lawyer Billingsley: Of course, this case was reversed, and it was a case involving a Mexican.

The Court: That is because they didn't have a Mexican on the jury of the county at that time, and the county had a large population of Mexicans.

Lawyer Billingsley: I would like to read here one paragraph, as follows: "The petitioner's initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class, and distinct from 'whites.' One method by which this may be demonstrated is by showing the attitude of the com- [fol. 217] munity. Here the testimony of responsible officials and citizens contained the admission that residents

of the community distinguished between 'white' and 'Mexican.' Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing 'No Mexicans Served.' On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked 'Colored Men' and 'Hombres Aqui' ('Men Here'). No substantial evidence was offered to rebut the logical inference to be drawn from these facts, and it must be concluded that petitioner succeeded in his proof."

The Court: By showing Mexicans were eliminated constituted within the meaning of the Supreme Court, a distinct elimination by class, and they so recognized. I think you have carried the burden by showing there is a large class of negroes. There is a large class of whites. You introduced evidence of population ratio of some twenty-five thousand to fifteen thousand. As far as this Court is concerned, you need go no further wasting or prolonging the time of this Court. The Court knows because he has the knowledge, there is, particularly in the Montgomery area, a large segment of the negro race.

Lawyer Billingsley: We call upon the Court to take into consideration that there is in this community, or Montgomery County, a type of discrimination and segregation that sets some types of people apart from other types.

The Court: No, the Court will not take that into consideration. The Court will take into consideration that for many years we have had segregated schools under a system the Supreme Court said was proper until recently. I will recognize that, but the Court will not admit there has been discrimination. That is a matter which becomes a burden on you of carrying and proving it by the testimony.

Lawyer Billingsley: We would like an exception to Your Honor's ruling.

The Court: An exception is granted the defendant.

By Lawyer Billingsley:

Q. I show you this book here and ask you if you recognize it? (Indicating)

[fol. 218] A. It purports to be the 1950 census of population.

Q. Volume II, characteristics of the population of Alabama?

A. That is what it says. I don't recognize it, though. I have never seen it before.

Q. I will read from this book. This is a report of the seventeen -decennial census of the United States, census of population; 1950, Volume II, Characteristics of the Population, Number of Inhabitants, General and Detailed Characteristics of the Population, Part 2, Alabama, Prepared Under the Supervision of Howard G. Brunsman, Chief, Population and Housing Division.

OFFER IN EVIDENCE

Lawyer Billingsley: I would like to offer this book in evidence.

The Court: I might say to save time that this is a bound volume of the United States Census of Population, and you may refer to it and quote any Sections from it.

The Assistant Solicitor: Let us agree and stipulate this is a volume of the official 1950 census and we needn't ask anyone to come here to prove it.

The Court: You agree to introduce it in evidence you are privileged to do so.

The Assistant Solicitor: Let us stipulate it is the census, and that you read into the record what you want from it.

Lawyer Billingsley: That is agreeable to us.

The Witness: You were asking me a question about it; you started out by asking a question. I am not familiar with it.

The Court: There isn't any question about it being the census. Read into the record what you care to from the census.

Lawyer Billingsley: This is Montgomery County, Alabama. I read from the census, those persons twenty-one years and over. The total population is 85,948. The male population is 40,144. The female population is 45,804.

Now, I will give the white population, both male and female.

The Assistant Solicitor: We object to the female. Our juries here are male.

[fol. 219] The Court: I don't think the female is relevant. However, you may introduce the figures if you desire in the census, the number of females doesn't enter into the question at all, as far as juries are concerned.

Lawyer Billingsley: The white male is 25,021; white female is 26,848; the non-white, or negro population, male, 15,123; and female, 18,956.

By Lawyer Billingsley:

Q. I believe you testified as to the voters on the poll list of Montgomery County, and you gave us the number, the total number, 26,323 as being the number of registered, qualified voters of this county; is that right?

A. 26,323.

Q. How many of those did you say were negroes?

A. 1,774.

Q. Where did you get that information?

A. That information is secured from the Brown Printing Company, who compiles the list of qualified voters. I also verified those with the Chairman of the County Democratic Executive Committee, Mr. Herbert Nation, and I also have a copy of the thing in my office, a qualified list in my office, I am sure.

Q. How can you distinguish on there whether the voters were negro?

A. The are listed separately.

Q. Have negroes on one sheet and white persons on another?

A. Well, no. They are listed separately.

Q. What did you say?

A. I said they are listed separately.

The Court: The fact that a man's name appears on the voting list has nothing to do with the jury list. The fact that he is a voter doesn't qualify him to be a juror.

Lawyer Billingsley: The State first presented the matter about voters, as I remember.

The Court: We are not going to clutter this record with poll lists. In the Court's opinion it is irrelevant to the issue of this matter before the Court now.

[fol. 220] Lawyer Billingsley: We ask for an exception.

The Court: The exception is granted the defendant.

By Lawyer Billingsley:

Q. In this list you have obtained in your office what names appear first, white or black?

A. I don't know.

Q. As a matter of fact, the white names appears first on the poll list?

A. I don't remember. I couldn't answer that.

Q. They do that, don't they, appear before the negro names?

The Assistant Solicitor: He has already answered he don't know.

The Court: I think Mr. Thetford said he don't know. That is still his answer. The Court feels there is no use asking him more than once if he doesn't know.

The Witness: I don't know.

By Lawyer Billingsley:

Q. I believe you further testified there were schools for negro voters negro potential voters, negroes interested in becoming qualified, registered voters in this county?

A. I did testify to that.

Q. Where did you get that information.

A. It so happens that my office is right next to the Board of Registrars. I have heard people up here, negro race and others up there—I have heard the Registrars talking to them and asking them whether they have attended such schools and they said they did. That is where my information came from. I have had other people tell me.

Q. You have had numerous complaints concerning negroes appearing before the Board of Registrars of this county?

The Assistant Solicitor: We object to that.

The Court: The objection is sustained. We are not in a voting case. This is not a case against the Board of Registrars. I sustain the objection as irrelevant to the matter before the Court.

Lawyer Billingsley: We ask for an exception.

The Court: An exception is granted to the defendant.

By Lawyer Billingsley:

Q. I show you this paper and ask you what it is purported to be?

[fol. 221] (Indicating)

A. This would be the panel of regular jurors drawn for the week of May 30th.

Q. Tell the Judge how many names on there.

A. Fifty.

Q. Can you take that list and identify the names of any persons thereon whom you know as negroes?

A. Yes, I can.

Q. What names?

A. I see James E. Lott, brick layer, 3364 Tuskeegee Circle and I see F. L. Lowe, Manager, Smith and Gaston Funeral Home. I see Walter Nesbitt, a construction worker, 1019 Tuscaloosa Street. I see Roscoe A. Williams, electrician, 1219 Houston Street. And there may be others.

By the Court:

Q. Those you recognize as negroes?

A. I recognize those as negroes.

By Lawyer Billingsley:

Q. These last jurors are also for the week of May 30th?

A. Regular jurors for that week.

Q. Take this paper and identify that, please? (Indicating)

A. These are the special jurors for the week of May 30.

Q. Do you see any negroes names on there?

A. Yes.

Q. Will you call them off, please?

A. John A. Blair; Issac Hathaway, I think Elisha T. James. I am not sure. Very well, he would be because he is a teacher at the Alabama State College. Robert McTier. And there may be others. Those are the ones I recognize.

Q. This is a list of special jurors? (Indicating)

A. That is right.

Q. Drawn for the week of May 30, 1955; is that right?

A. That is true.

Q. Checking that list of special and regular jurors, how many names have you thereon?

A. It showed fifty. Actually there is sixty four here for service.

[fol. 222] On that it shows fifty.

Q. Both of them together shows one hundred?

A. That is right.

By the Court:

Q. There are sixty four here for service?

A. There are sixty four here to serve, yes, sir.

By Lawyer Billingsley:

Q. Do you know any of those negroes, do you know any of them personally?

A. Walter Nesbitt was on the jury before. I don't know all of them.

Q. Personally?

A. Personally? I know them.

Q. Personally?

A. I don't know what you call personally.

Q. How do you know them?

The Assistant Solicitor: We object to that.

The Court: Objection sustained.

The Witness: I know some of them to speak to.

By the Court:

Q. You have a speaking acquaintance with some of them?

A. I have a speaking acquaintance with some of them.

By Lawyer Billingsley:

Q. I will show you both lists, the list of special jurors and the list of regular jurors. Go through them and see if there are any white people on there you know personally.

The Assistant Solicitor: We object.

The Court: Objection sustained.

Lawyer Billingsley: We would like to have an exception.

The Court: Exception noted for the defendant.

By Lawyer Billingsley:

Q. Have you made an investigation of the negro jurors on either of these lists?

The Assistant Solicitor: We object to that.

The Court: He answered he didn't, if I recall the answer.

[fol. 223] The Witness: I have not.

By Lawyer Billingsley:

Q. Therefore, I guess you are going to try to do your best, are you; you wouldn't know anything about them so far as to whether to strike them or not strike them?

The Assistant Solicitor: That is objected to.

The Court: Objection sustained.

By Lawyer Billingsley:

Q. Would you strike them?

The Assistant Solicitor: We object.

The Court: Objection sustained. I might as well let Mr. Thetford ask you if you were going to strike anybody too. That is a matter of right always. I wouldn't allow the Solicitor to ask counsel, or allow you to ask him, which ones either one intends to strike. That is completely irrelevant and completely out of order in this case.

The State Rests on the Motion to Quash the Venire.

Testimony Closed on the Motion to Quash the Venire.

The Court: Do counsel desire to be heard, or do you agree for me to take it under advisement?

Lawyer Billingsley: Yes, sir, we would like to be heard.

(By agreement of counsel, fifteen minutes alloted to each side for argument.)

The Court: The Court will take the matter under advisement ~~and will announce~~ its decision at eleven fifteen.

[fol. 224] Eleven-fifteen o'clock A. M.

Parties present as before noted.

Order Overruling Motion to Quash Venire.

The Court: The motion of the defendant to quash the venire, has been considered by the Court. The Court has heard the evidence offered by the parties in favor of and opposing the motion. The Court has also had the benefit of

It is the opinion of this Court that the defendant has failed to prove discrimination, or that have the names of any material number of the negro race been systematically excluded from jury service in Montgomery County. From the evidence presented on this motion, to me the conclusion is inescapable with respect to the selection of jurors there is no discrimination against or systematic exclusion of members of the negro race by reason of their race or color. The Court finds from the evidence the methods provided by law and followed in the county, the selection of jurors is held to be, in fact, at least in this county, without discrimination members of the negro race are selected for jury service, are, as other citizens are called to serve, and actually to serve on the Grand and Petit Juries in this county. In fact, a number of citizens who are members of the negro race are on the present venire. The evidence before this Court, rather than establishing discrimination against or systematic exclusion from jury service because they are negoes, in fact, shows the contrary, and shows a substantial representation of negro citizenship on the rolls of this county.

It is, therefore, considered, ordered and adjudged by the Court, that the motion to quash the venire is without merit, and that it should be, and it is hereby overruled and denied, and the case of the State of Alabama vs. Jeremiah Reeves will proceed to trial.

Lawyer Billingsley: We would like to take an exception.

The Court: You have an exception.

Lawyer Billingsley: If the Court please, the defendant, Jeremiah Reeves, Junior, at the time a plea was entered in [fol. 225] this Court on the fifteenth day of to-wit November, 1952, at which time he was not represented by the attorneys here now, and a plea was entered of not guilty, and not guilty by reason of insanity——

The Court: I believe at that time he was represented by able counsel of his own choosing.

Lawyer Billingsley: We admit that. And the defendant presents to this Court this motion:

MOTION FOR APPOINTMENT OF LUNACY COMMISSION—omitted. Printed side page 227 ante.

[fol. 226] We present this motion to the Court. And Your Honor has already heard at the trial held in November, 1952, certain witnesses who testified as to his habits, and so forth, so we will not take up the time of the Court to present witnesses on behalf of the motion as such, but we [fols. 227-228] ask that the Court grant this motion of the defendant in that it is necessary to determine the mental status of the defendant as to whether he was insane to the extent that he would not be criminally responsible for any of his crimes, so that justice will be done in this cause and accorded the defendant as such.

ORDER DENYING MOTION FOR LUNACY COMMISSION

The Court: The Court is familiar with the background of that particular case. The Court refuses the defendant's motion, and is of the opinion that it should be, and is ordered that it is hereby denied.

Lawyer Billingsley: We would like to have an exception noted.

The Court: All right. Exception granted for the defendant.

Lawyer Billingsley: We would like to offer in evidence this motion in writing.

(Marked "Defendant's Exhibit 5, 5-31-1955, WHL")

DEFENDANT'S EXHIBIT 5—Motion for appointment of lunacy commission—Omitted. Printed side page 12 ante

[fols. 229-230] Lawyer Billingsley: On behalf of the defendant we would like to make a motion which we have already made, and ask the Court on motion that the defendant have permission to withdraw pleas. And we submit to the Court the same motion which we presented to this Court yesterday, and on behalf of the motion to withdraw pleas we present the following motion. This is a motion we wish to submit to quash the indictment.

Motion to Quash Indictment—Omitted. Printed side page 232, infra.

[fol. 231] We ask the Court to grant our motion, and withdraw the pleas as entered by the defendant on November 14, 1952, of not guilty, and not guilty by reason of insanity.

The Solicitor: The law is that a motion to quash an indictment must be entered before arraignment and before a plea has been entered to the merits in this case. A plea to the merits of this case, which occurred when the defendant was represented by counsel of his own choice, was entered in this Court almost three years ago, and such a plea or motion as this comes approximately three years too late. That is a considerable amount of this motion that is just factually not true, such as, that the indictment was returned based upon an alleged confession. That simply isn't true. The indictment was based on direct evidence and positive identification of the defendant.

Order Denying Motion to Quash the Indictment

The Court: It is the considered opinion and order of this Court that the motion to quash the indictment should be and is hereby denied and overruled, and for which the defendant is granted an exception.

Lawyer Hall: Your Honor has ruled. I suppose any remarks we make would be completely out of order.

The Court: You can take any exception to the ruling.

Lawyer Hall: I would like to take exception to the ruling based particularly on this particular condition and hope the Court will take notice. Jeremiah Reeves was indicted by the Grand Jury of Montgomery County on November 14, [fol. 232] 1952, and arraigned the very next day, and that at the time of arraignment it was necessary for his then counsel to plead for him; he didn't have motions prepared, and didn't prepare motions as to the legality of the indictment at that particular time. And we would like the Court to take notice of the fact that between the time of his indictment, November 14, 1952, and his arraignment on November 15, 1952, that his then counsel didn't have time to prepare proper motions. We ask Your Honor to take notice of that fact before ruling on this particular motion.

The Court: The Court takes judicial notice of the rec-

ords of this Court which show the date of the return of the indictment and the date of arraignment. I am fully familiar with that, and the ruling I have previously made will stand, with an exception granted to you.

Are there any other motions?

Lawyer Hall: No, sir.

The Court: I will ask that the jurors be called and begin to strike the jury in this case.

(Motion to quash indictment marked "Defendant's Exhibit 6, 5-31-1955, WHL")

DEFENDANT'S EXHIBIT 6

IN THE CIRCUIT COURT, MONTGOMERY COUNTY, ALABAMA

Case No. 5121

STATE OF ALABAMA

vs.

JEREMIAH REEVES, JR.

MOTION TO QUASH INDICTMENT

Now comes the defendant, Jeremiah Reeves, Jr., in the above said action, and respectfully moves this Honorable Court to quash the indictment, heretofore returned against him in this cause, and to hold the same for naught, and as grounds for said motion, sets out and assigns the following, separately and severally, to-wit:

1. For that the indictment returned against defendant by the Grand Jury for Montgomery County, Alabama, on to-wit, the 14th day of November, 1952, was based upon an [fol. 233] alleged confession of guilt which same was extorted and illegally obtained from defendant herein by and through force and violence or threats of force and violence, coercion, torture and brutality officers and detectives of the City of Montgomery and of Montgomery County, Alabama, and the State of Alabama, while acting in their official capacities, and the defendant avers that he thereby was

deprived of due process and equal protection of the laws guaranteed him by the Constitution and laws of the State of Alabama, and Fourteenth Amendment to the Constitution of the United States of America.

2. For that prior to the return of the aforesaid indictment in this cause, defendant was arrested without a warrant on to-wit: the 10th day of November, 1952, was never taken to a magistrate, was held in the County Jail of Montgomery County, Alabama, for a period of about five minutes, without formal charges against him, and without being permitted to confer with counsel, his parents or friends, and was, subsequently taken to Kilby Prison, situated in the City of Montgomery, Alabama, where he remained for about ten days, where he was not allowed to confer with counsel, parents or friends until he had been indicted in this cause, and after defendant had been subjected to days of uninterrupted questioning by officers of the City of Montgomery, Alabama, and of Montgomery County, Alabama, and subjected to violence or threats of violence, coercion and force, or threats of force, an alleged confession was extorted from him, which is the sole basis for the said indictment, and defendant avers that he was thereby deprived of his rights to due process and to equal protection of the laws guaranteed him by the Constitution and Statutes of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.

3. For that the defendant was convicted by a verdict of a Montgomery County, Alabama Petit Jury empaneled, on the 28th day of November, 1952, to try him in said cause and was sentenced to death in the electric chair; that subsequent to said sentence an automatic appeal was taken to the Supreme Court of the State of Alabama which conviction was affirmed by said Supreme Court of the State of Alabama, whereupon defendant, on constitutional grounds, appealed said conviction to the Supreme Court of the [fol. 234] United States of America, and the conviction of the Circuit Court of Montgomery County, Alabama, was reversed, without any directions to remand said cause for further trial (Jeremiah Reeves, Jr. vs. State of Alabama), for all of which the Circuit Court of Montgomery County, Alabama, can take judicial notice; and defendant further alleges that he is now being tried for the very same offense;

without being re-indicted or re-arraigned and the said Circuit Court has not as of now returned a valid indictment against him and has refused to re-arraign him in said cause, thereby depriving defendant of his rights to due process and to equal protection of the laws guaranteed him by the Constitution and Statutes of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.

Wherefore, the defendant prays that this Court will take notice of this, his Motion to Quash Indictment in the above said cause, and declare the same void, and that Your Honor will, after consideration of the evidence and proof which the defendant offers to make grant said motion.

(S.): Jeremiah Reeves, Jr., Defendant.

Duly sworn to by Jeremiah Reeves, Jr. Jurat omitted in printing.

[fol. 235] CERTIFICATE OF SERVICE (omitted in printing).

Take notice that the above said Motion is set for an oral hearing before me the 21 day of May, 1955, at — o'clock.

————, Judge for Said Circuit Court.

11:30 o'clock, Recess.

11:40 A. M., Court Resumed. Parties present as before noted.

COLLOQUY

The Court: Do counsel for the defendant have any questions to ask the jurors than the usual ones we ask in qualifying them?

The Solicitor: I would like each member of the jury panel qualified as to whether they are, or not, a member of the National Association for the Advancement of Colored People.

Lawyer Hall: We are going to object to that particular question with respect to the National Association for the Advancement of Colored People; we cannot see where it would be pertinent, and has nothing at all to do with going into the qualifications of the jurors here.

The Court: I think every counsel has a right to ask for general information. It is a privilege I have given you. Any question you want to ask for general information I [fol. 236] would be glad to do so.

Lawyer Hall: We feel that particular question would be asked for the purpose of misdirecting issues, and prejudicing the minds of the jurors, or some of them. We are objecting to any questions with reference to the National Association for the Advancement of Colored People.

The Court: Do you wish to reply to that?

The Solicitor: The information we have—it may or may not be correct; I wouldn't say it is or isn't—this information came to me this case is being financed by the National Association for the Advancement of Colored People. I think it would be pertinent.

Lawyer Hall: It doesn't matter who pays for this man's defense.

The Court: The Solicitor wants to know whether any member of this venire has any connection with it. For the same purpose I will ask any question for you if you ask me to do so. It is a question of finding out the back ground, or bias. You don't want any juror that has any bias.

Lawyer Hall: We are going to object to that particular question with reference to that particular association. We insist that the Solicitor asked that question simply to inject bias into this trial.

The Court: Your objection is overruled, and you are granted an exception. And at the proper time the Court will strike any juror found to be prejudiced or biased. And if any jurors might be biased or prejudiced they will inform the Court of that fact and he will be disqualified for service in this case.

Lawyer Hall: I move for a mistrial on the ground the Solicitor of Montgomery County deliberately injected into this cause an issue calculated to bias or prejudice the minds of the jurors, who are all present and heard what the Solicitor said and the discussion about it.

The Court: Your motion is denied.

Lawyer Hall: I would like to take an exception based on the fact this defendant is denied due process and equal [fol. 237] protection of the laws guaranteed him by the Constitution and Laws of the State of Alabama, and the

Fourteenth Amendment of the Constitution of the United States of America.

The Court: An exception is granted the defendant.

Lawyer Billingsley: I would like to ask the Court that each juror be asked, since the Solicitor's question would be asked, the mere fact that if this case is paid for by the National Association for the Advancement of Colored People, whether or not it would bias their opinion against this defendant.

The Court: I will be glad to ask the question.

SELECTION OF THE JURY

The Clerk: The jurors whose names are called come up before the bar of the Court. Iran D. Booth; Walter Brenner; J. T. Cole; Jerry D. Compton.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in the County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Iran D. Booth: I have.

The Court: You are excused.

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, [fol. 238] have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These three are qualified.

Would you like them to give their names and occupations?

Lawyer Hall: We would like each juror to give his name and occupation.

(The three jurors stated their names and occupations.)

The Clerk: Ivy B. Dasher; Horace M. Davis; R. Binchard DeWitt; W. M. Foley.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

R. Bichard DeWitt: I am.

The Court: If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

R. Bichard DeWitt: No.

The Court: Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

[fol. 239] These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Franklin Franz; John R. Furlong; Louis L. Goldblatt; Marvin Gresham; John P. Harrison.

The Court: We are about to try the case of the State

of Alabama versus Jeremiah Reeves; Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Louis A. Goldblatt: I have.

The Court: You are excused.

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four jurors are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Elbert R. Hughes; A. Knox Jackson; Leonard H. Jacobs, Alex P. Long; James E. Lott.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

[fol. 240] Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

A. Knox Jackson: I am against capital punishment.

The Court: You are excused.

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt.

Are any of you members of the National Association for the Advancement of Colored People?

James E. Lott: I am a member.

The Court: If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

James E. Lott: No, sir.

The Court: Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: George W. Maddox; F. L. Lowe, Jerie McDonald; Charles C. McGee, Jr.; William E. McGehee.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

[fol. 241] Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

R. L. Lowe: I am a member.

The Court: If it is a fact that funds for this defendant's

defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

F. L. Lowe: No.

The Court: Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These five are qualified.

(The five jurors stated their names and occupations.)

The Clerk: I. Riley Nettles; O. G. Pinkston; George Pollard; W. F. Prater; William Pritchett.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocense of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

George Pollard: I am against capital punishment.

The Court: You are excused.

[fol: 242] Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict; or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Charles Reeder; W. N. Sealy; Robert L. Talley; Anderson Thompson.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

[fol. 243] Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

Robert L. Talley: I served on the previous jury.

The Court: You are excused.

These three jurors are qualified.

(The three jurors stated their names and occupations.)

The Clerk: E. Carl Vinson; Fred Waldo; George Watts; Horace R. Williams.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Clifton G. Allen; Virgil L. Anderson; J. B. Avery; John A. Blair; James E. Brooks.

The Court: We are about to try the case of the State of [fol. 244] Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

J. B. Avery: I have not lived in the county a year.

The Court: You are excused.

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Robert Brooks; Robert C. Copeland, Jr.; Ben W. Cronier; Nelson Daniel, Willie D. Dearmond.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or inno- [fol. 245] cence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These five are qualified.

(The five jurors stated their names and occupations.)

The Clerk: John F. Gorman; Craig W. Gunn; Charles E. Ingalls; Elisha T. James.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict.

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advance-
[fol. 246] ment of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at anytime or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Patrick Lowe; Joseph S. Marcus, Jr.; C. E. Montoya; John McTier; John A. Perdue.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These five are qualified.

(The five jurors stated their names and occupations.)

The Clerk: William G. Pruett; Oscar T. Rainwater; E. Wilbur Slauson; Elvis L. Stalnaker.

[fol. 247] The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

The Clerk: Rupert L. Stevens; Eugene C. Vann; Frank Williford; L. Raymond Harshman.

The Court: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

[fol. 248] Have you any fixed opinion against capital punishment or penitentiary punishment?

L. Raymond Harshman: I am opposed to capital punishment.

The Court: You are excused.

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

Have any of you ever at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These three are qualified.

(The three jurors stated their names and occupations.)

The Court: The Clerk will furnish a corrected list to the attorneys.

The Clerk: There are forty-four jurors qualified. The State has fifteen strikes, the defendant twenty-nine strikes.

12:30 P. M. to 1:05 P. M. Striking the Jury.

The Clerk: The jurors selected to try the case are numbers 8, 21, 29, 31, 57, 71, 76, 79, 84, 88, 89 and 90.

The jurors whose names are called come around and take seats in the jury box. Horace M. Davis; Elbert R. Hughes; Charles C. McGee, Jr.; J. Riley Nettles; Ben W. Cronier; Charles E. Ingalls; C. E. Montoya; John A. Perdue; E. Wilbur Slauson; Rupert L. Stevens; Eugene C. Vann; Frank Williford.

The jury will answer to their names, the twelve jurors answer to their names.

(The twelve jurors answered to their names when called by the Clerk.)

[fol. 249] All stand and be sworn.

You solemnly swear that you will well and truly try the issue joined between the State of Alabama and Jeremiah Reeves, Junior, charged with the offense of rape, and a true verdict render according to the evidence, so help you God.

The Court: All witnesses who are going to testify come around and be sworn, both for the State and for the defendant. I presume you all want the rule?

The Solicitor: Yes, sir.

Lawyer Hall: Yes, sir.

The Court: I instruct you witnesses this—I am talking to the witnesses—the Court is going to recess this case until two forty-five P. M. You have been sworn as witnesses, you are under the jurisdiction of this Court; you are not to discuss this case with any one or among your selves at any time during the trial of this case. You are not permitted to discuss this case with anybody or know anything about it. You will be back in this Court Room under order of Court not later than two forty-five this afternoon.

As to the jurors not serving upon this case, Judge Carter has adjourned his Court until two o'clock. I know that doesn't give you time to get lunch. I will allow you to be back in his Court Room at two-fifteen. And any other witnesses and parties interested in any other cases be back in the other Court Room at two-fifteen. That applies to all jurors in the Court Room other than those actually sitting upon this jury.

For the benefit of the spectators sitting back there I want to say this. This Court will begin again at two-forty-five. The Constitution of Alabama, Article 6, Section 169, provides in all prosecutions for rape and assault with intent to ravish, the Court may, in its discretion, exclude from the

Court Room all persons, except such as may be necessary in the conduct of the trial. This constitutional exclusion is also provided in Section 320, Title 15, Code of Alabama. Based upon this further expressed authority, it is the order of the Court there will be excluded from the Court Room all persons other than the defendant, and counsel repre- [fol. 250] senting the parties, the Court officers, and attorneys, members of the Press, radio, television, or other news gathering services, any uniformed officers, members of the bar, and the family and relatives of the defendant, Jeremiah Reeves, Junior.

Lawyer Hall: We want to enter an objection to Your Honor's ruling.

The Assistant Solicitor: You have just given us your ruling there. Can't we argue it after lunch?

The Court: You will be given an opportunity to argue it after lunch.

I am also allowing Jeremiah Reeves's pastor to stay in the Court Room.

Everybody, other than this jury, may now clear the Court Room, and do it as quietly and quickly as you can.

We are going to take a recess until two forty-five o'clock P. M. and the jury as a body will be taken to lunch. During the recess you are not to discuss this case with anyone; you are to have no conversation with anyone but members of the jury and Bailiff in this case. Even in this conversation you will not discuss this case, any phase of it; you are not supposed to express any opinion among yourselves about it, because in the trial of this case only after you have listened to the evidence, at the proper time, upon proper instructions of the Court, will you pass upon it. Also, while you are out of the presence of the Judge in this case you are not to read any newspapers, magazines, listen to any radio, any television, or anything else. You are going to have a small amount of entertainment on account of the confinement, even though you are on the outside, except for your own company. I also want to say this. You are not to communicate with anyone. You may not have anyone communicate with you by telephone or otherwise. If you desire to communicate with your homes you will do that through the Bailiff. No one can communicate personally with you, or you may not communicate personally with any-

one. You are excused into the custody of the Bailiff until two forty-five o'clock P. M.

The Court now stands in recess until two forty-five this afternoon.

[fol. 251] One-eighteen o'clock P. M.

The defendant left the Court Room and the jury retired.

2:45 o'clock P. M.

Lawyer Hall: We have some motions we would like to make. The first motion has to do with the Jury Commission itself. We ask Your Honor respectfully to set aside the entire jury box, members of the jury, on the following grounds.

The Court: I understood that your motion was noted on the record. I understand your motion now is filed in open Court and is denied.

Lawyer Hall: We take an exception.

The Court: All right.

(Motion referred to and offered in evidence marked "Defendant's Exhibit 7, 5-31-1955, WHL")

DEFENDANT'S EXHIBIT 7—Motion to Set Aside Entire Jury Box—Omitted. Printed Side Page 17 ante

[fol. 252] Lawyer Hall: We have a motion which we will present orally, having to do with the present jury. We ask this Honorable Court to declare void and illegal the composition of the present jury on the ground no negroes are serving on said jury, and negroes are not serving on said jury organized to try the defendant in this cause because they have been systematically and arbitrarily excluded solely because of race and color.

The defendant says that the exclusion of negroes from service on this jury organized to try him in this cause solely because of race or color deprives him of his rights of due process and equal protection of the laws guaranteed by the Constitution and Laws of the State of Alabama and the Fourteenth Amendment to the Constitution of the United States of America.

I will furnish a written motion later.

The Court: The motion being considered and understood by the Court, the Court is of the opinion the motion is [fol. 253] without merit and said motion is hereby denied.

Lawyer Hall: We would like to take an exception.

The Court: Exception granted.

(Motion referred to and offered in evidence marked "Defendant's Exhibit 8, 5-31-1955, WHL")

DEFENDANT'S EXHIBIT 8—Motion to Declare Void Composition of Jury Sworn to Try Defendant—Omitted. Printed side page 18 ante

[fol. 254] Lawyer Hall: I don't know if we are ahead of ourselves in the next motion, or not. I understand you haven't ruled on the exclusion of the public.

The Court: I am going to in just a moment. Bring the jury out.

2:59 o'clock P. M.

The Jury returned to the Court Room.

The Court: The Court announced before recess Section 169 of the Alabama Constitution provides: "In all prosecutions for rape and assault with intent to ravish, the Court may, in its discretion, exclude from the Court Room all persons, except such as may be necessary in the conduct of the trial." On the basis of that provision of the Constitution and also of Title 15, Section 320 of the Code of Alabama, 1940, in exercising the discretion vested in me as Judge presiding at this trial, I do now order there shall be excluded from the Court Room all persons, other than members of the bar, counsel, officers of the Court, law enforcement officers, officers of the Court, including members of the bar, the accused, the members of the family of the accused, and his relatives, and the parson of his church. I also exclude from this ruling members of the press, members of radio and television and news services. Anyone not falling within the categories that I have mentioned are now ordered to leave the Court Room. And anyone who don't fall within any of the excuses will not be allowed to come in the Court Room during the trial of this case. And those who belong to that category may leave at this time.

The Clerk: All witnesses will step in here until we call you.

Lawyer Hall: The defendant objects to Your Honor's ruling to exclude the public, and we file a motion to allow the public to remain.

(Marked "Defendant's Exhibit 9, 5-31-1955, WHL")

[fol. 255] The Court: The motion in opposition to the Court's ruling on the exclusion of persons above mentioned from the Court Room, presented to the Court and marked filed in open Court, motion being considered and understood by the Court, the Court finds it to be without merit and it is denied.

Lawyer Hall: We take an exception to Your Honor's ruling.

The Court: All right.

DEFENDANT'S EXHIBIT 9—MOTION TO ALLOW PUBLIC TO REMAIN—Omitted. Printed side page 19 ante

Lawyer Hall: This is a motion where the public be excluded only while the prosecut-ix testify.

The Court: Motion received and filed, and being considered by the Court it is ordered that the same be denied.

Lawyer Hall: We take an exception to Your Honor's ruling.

[fol. 256] The Court: Exception granted.

(Motion referred to and offered in evidence marked "Defendant's Exhibit 10, 5-31-1955, WHL")

DEFENDANT'S EXHIBIT 10—MOTION TO EXCLUDE PUBLIC WHILE PROSECUT-IX TESTIFIES—Omitted. Printed Side page 20 ante

The Court: Are there any further motions?

Lawyer Hall: No.

The Solicitor: I was going to ask that the husband of the complaining witness be allowed to stay in the Court Room, but I am not going to press that.

The Court: Both sides have requested the rule, and all witnesses in this case either remain outside of the Court Room or in this room over here. You will remember the instructions I have given you. You are not to discuss this [fol. 257] case with anyone except counsel in the case.

I understand that from past experience probably the defendant's father and mother will testify; is that correct?

Lawyer Hall: Probably so.

The Court: They may stay in the Court Room at all times. The Court will exclude them from the rule.

The Court: You may state your case to the jury.

(The Solicitor opened the State's case to the jury.)

The Court: State your case, counsel.

Lawyer Hall: We wish to state the defendant is not guilty, and we will be able to show you by a preponderance of the evidence he is not so.

The Court: The State may call its first witness.

EVIDENCE ON BEHALF OF THE STATE

ANN CROWDER, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the jury, please?
A. Mabel Ann Crowder.
Q. How old are you?
A. Twenty-two.
Q. How old were you on July 20, 1952?
A. Nineteen.
Q. On that date where were you living?
A. 3852 Cleveland Avenue.
Q. In what city and what county?
A. Montgomery County, Montgomery City.
Q. Were you married at that time?
A. Yes.
Q. Was your husband living there with you?

[fol. 258] A. Yes, sir.

Q. Where were you on the morning of July the 28th, 1952?

A. At home, 3852 Cleveland.

Q. That is the City of Montgomery in Montgomery County?

A. Yes.

Q. That morning did you see the defendant here?

A. Yes.

Q. About what time did you see him?

A. It was close to noon.

Q. What kind of a building were you living in?

A. A one story brick home.

Q. A one story brick home?

A. Yes.

Q. Was it an apartment or a single dwelling?

A. It was a single dwelling.

Q. Where were you at the time you saw this defendant on that morning?

A. In the bedroom, sitting before the mirror taking the bobby pins out of my hair.

Q. You say you were in the bed room?

A. Yes, sir.

Q. Was that a front or back bedroom?

A. Front.

Q. Front bedroom?

A. Yes.

Q. How were you dressed at the time you first saw this defendant?

A. I was in under garments and a robe, a house coat.

Q. Had you ever seen him before in your life?

A. Not to my knowledge.

Q. Now, how did you see him then, what manner, how did you first see him?

A. I looked in the mirror and he was standing back of the door.

Q. Were you facing the mirror?

A. Yes, I was.

Q. Were you standing up or sitting down?

A. Sitting down, sitting on the arm of a rocking chair.

[fol. 259] Q. You testify you first saw him when you were looking into the mirror. Where was he standing?

A. Back at the door behind me to the left.

Q. Had he come through that door?

A. No. He was just standing in the door way at the time.

Q. Do you remember how he was dressed?

A. Yes, sir.

Q. How was he dressed?

A. Blue trousers, light blue, a print shirt, I think blue or black, with a gold or yellow designs or figures. It was loud, flashy.

Q. The time when you looked in the mirror and saw him he would be behind you; is that right?

A. Yes.

Q. As you were facing the mirror?

A. Yes.

Q. What did you do when you saw him in the mirror?

A. Well, naturally I turned around and told him to get out.

Q. Told him to get out?

A. Yes.

Q. Where were you sitting when you spoke to him?

A Still in front of the dresser across the room from him.

Q. Now, did you speak first, or did he speak first?

A. I did.

Q. You did?

A. Yes.

Q. Will you repeat as nearly as you remember what you first said to him?

A. "Get out.'

Q. "Get out?"

A. Yes.

Q. Do you remember any thing else you said?

A. No, I think I repeated that again.

Q. Standing there across the room did he say anything?

A. No. He just started across the bedroom coming toward me.

Q. Coming toward you?

[fol. 260] A. Yes.

Q. What happened after that?

A. I started screaming and he told me to shut up.

Q. When he told you to shut up was he touching you?

A. Yes.

Q. Where was he touching you?

A. I don't know. He had grabbed me around here, and he was holding me at the time, and I do remember he choked me to make me stop screaming.

Q. He choked you to make you stop screaming?

A. Yes.

Q. What did he do then?

A. Well, he kept telling me to shut up.

Q. Were you still screaming?

A. Well, as long as I could, yes.

Q. Did you strike at him in any manner?

A. I did. I don't remember whether I hit him, or not. He was holding me. His arms were real long.

Q. That is right after he came across the room?

A. Yes.

Q. Did you strike at him then?

A. Yes.

Q. Do you know whether you hit him, or not?

A. No, sir, I don't.

Q. Do you know how many times you struck at him?

A. No, sir.

Q. Was he, or not, choking you at that time?

A. He was.

Q. What happened then?

A. He held one hand on my throat, and with the other hand held my arm, and he made me pull my pants off.

Q. Did he tell you to do that?

A. Yes.

Q. Do you remember what language he used?

A. Not exactly, I couldn't be sure of the exact words.

[fol. 261] Q. Was he talking to you at the time?

A. Yes.

Q. Had he struck you at any time up to this point?

A. No. He had held me and choked me, but he hadn't struck me.

Q. And then what did he do?

A. He pushed me across the foot of the bed.

Q. Across the foot of the bed?

A. Yes.

Q. And did he then and there have an intercourse with you?

A. Yes.

Q. Now, during the time that he was on you did he choke you?

A. Yes.

Q. Was he continually choking you? Will you explain that part of it to the jury?

A. Well, he always had his hand on my throat, had one hand on my throat. It never left my throat.

Q. Was he squeezing you at that time?

A. Yes, sir. Every time I started to make a sound he tightened the grip on my throat.

Q. Were you trying to get away from him during that period of time?

A. Yes.

Q. Will you tell the jury what you were doing to try to get away from him?

A. I struck at him several times.

Q. Did you try to kick him?

A. I couldn't. The way he was holding me I couldn't kick.

Q. Just go on and tell us what happened in your best recollection.

A. Well, he had me across the foot of the bed and he raped me, and when he let me up he asked me was I going to tell, and I said no, if he would get out of there then and leave the house then, I wouldn't tell. And he said if I told I would be the one they would laugh at, people would laugh, meaning they wouldn't believe it. And it was after that he started hitting me.

Q. Will you tell the jury about his hitting you?

A. Well, he hit me in the stomach. When I fell over from [fol. 262] the bed he kicked me on the side of my face and continued, I don't know how many times he hit me then. And he left the room and I though he had gone at that time. I was lying on the floor by the side of the bed and I thought he had gone and I started getting up, but he came back in the room and started beating on me again and he held me by my hair and beat my head against the floor.

Q. Do you know how many times he hit your head against the floor?

A. For some strange reason I counted, and as long as I remember counting I remember counting thirteen times my head hit the floor.

Q. Were you conscious when he left, at the time he left do you remember him leaving?

A. No, I don't remember him leaving. When I came to there was a rug folded over my head, a small rug. I laid still just a few seconds. I didn't know. I thought maybe if he left I could tell by listening, and then I got up and went to my neighbor's house.

Q. Where did your neighbor live?

A. She lived next door, 3846 Cleveland Avenue.

Q. What is her name?

A. Mrs. Lois Struchko.

Q. Did he ask you for any money?

A. Yes.

Q. When did he ask you for money?

A. Before he started beating me.

Q. After he had raped you and before he started beating you?

A. Yes.

Q. Did you give him any money?

A. I told him where my pocket book was.

Q. Did he get any money?

A. Yes.

Q. Did you see him get it?

A. Yes.

Q. Do you know how much he got?

A. Very little. I believe it was $2.43, or something like that. I am not sure of that.

Q. Where was your pocket book?

[fol. 263] A. On the dresser.

Q. Do you remember anything else that he said during the time he was in that room?

A. He called me "Lady." I don't remember.

Q. Do you remember him taking anything other than money?

A. He took a package of cigarettes and a package of matches.

Q. Now, after this incident you say you went over to Mrs. Struchko's?

A. That is right.

Q. Where did you go, or where were you taken from there?

A. From there I was taken to the Maxwell Air Base Hospital.

Q. And how long were you there?

A. Over three days.

Q. Did you have an intercourse with him willingly?

A. No.

Q. Did you resist?

A. Definitely.

Q. As much as you could?

A. Definitely.

Q. Had you ever seen him before?

A. No.

Q. When did you next see him?

A. I believe it was in Noven ber after he was caught at the City Hall Building.

Q. Did you identify him there?

A. Yes.

Q. As the man who raped you?

A. Yes.

Q. I will ask you this. Did he have a mustache when you saw him?

A. No.

Q. Was he clean shaven?

A. Yes, sir.

Q. That is June 28, 1952?

A. July 28, 1952.

Q. He didn't have a mustache?

A. No.

[fol. 264] Q. I will ask you to look at him now. Is that the man who raped you? (Indicating the defendant)

A. Yes.

Q. Are you sure that is the man who raped you?

A. Yes. He is quite a bit heavier now, and has a mustache now, but he is still the same person.

Q. Let me ask you this. You said he told you, as I recollect your testimony, that people would laugh at you?

A. Yes.

Q. Did he threaten to kill you, or anything like that?

A. He said he ought to kill me. He didn't threaten to kill me.

Q. He just said he ought to kill you?

A. Yes.

Q. Was that before or after the beating?

A. It was during the beating.

Cross-examination.

By Lawyer Hall:

Q. Am I correct in stating this episode you say happened July 28, 1952?

A. That is right.

Q. And I believe you testified that you saw the defendant again what time?

A. In November the same year.

Q. November of that year?

A. Yes.

Q. Where was it you saw him?

A. At City Hall Building, Police Department.

Q. Here in Montgomery?

A. Yes, sir.

Q. Were you asked to come down there?

A. Yes.

Q. To see him?

A. Yes

Q. What were the circumstances under which you saw him at that time?

A. I went into a room, but he wasn't in the room I was [fol. 265] in. I looked at him through the glass.

Q. Do you mean he was in one room and you were in another room and you looked through a glass and saw him?

A. Yes.

Q. Was there anybody else in there with him?

A. I am not sure. I don't believe so.

Q He was the only person in the room?

A. Yes.

Q. Do you recall the exact date in November when you saw him at City Hall?

A. I believe it was the twelfth.

Q. And there had been some newspaper stories and pictures at that time.

A. I had known about it the day before.

Q. Had you seen the picture in the newspapers?

A. No, I hadn't.

Q. Did the newspapers allege he had confessed to a series of robberies, burglaries or rapes?

A. I don't know. If they did I didn't read that particular article.

Q. Can you tell us about what you read, or just the gist of what the papers said that you remember?

A. I don't remember reading the paper before seeing him.

Q. I am sorry. I was under the impression you had seen something in the paper before you identified him.

A. I said I don't remember.

Q. I am sorry. I was under the wrong impression. Do you have an impression there had been any publicity previous to you looking at him at the City Hall?

A. No.

Q. You haven't any impression at all, or judgment whether there had been any publicity?

A. There was publicity at the time it occurred. It was in the papers.

Q. This is in November?

A. No, in July.

Q. I mean in November.

[fol. 266] A. In November, I don't know. I remember hearing about another lady being attached.

Q. You did testify in the previous trial of Jeremiah Reeves for this crime did you not?

A. I did.

Redirect examination.

By the Solicitor:

Q. You testified, I believe, that you struck at him several times?

A. Yes.

Q. And did you hit him?

A. Nothing that I know of, but I had two broken finger nails, but I don't remember.

Q. Don't remember whether you hit him, or not, but you did have two broken finger nails?

A. Yes, sir.

Q. You don't know whether you hit him?

A. I don't know. I know I tried to.

Q. Which two fingernails of your were broken?

A. On my right hand. I believe my index finger and my ring finger.

Recross-examination.

By Lawyer Hall:

Q. Let me ask you a little something further with reference to your alleged identification of this defendant in November. Were you told on that occasion he had confessed before you looked at him?

A. I was given a written statement, but it wasn't signed.

Q. You were given a statement, or a statement allegedly made by this defendant?

A. I suppose so. It had his name on it, but it wasn't signed.

Q. It did have his name on it?

A. Yes.

Q. You were given that statement before you looked at him?

A. That is right.

Q. You had read that statement before you looked at him?

A. That is right.

Q. Did any of the officers down there tell you he con-[fol. 267] fessed, or did they make any statement at all to you with reference to that confession?

A. No.

Q. When this incident happened in July you made a report, of course, to the police. Did you describe your attacker at that time?

A. Yes, I did.

Q. Do you recall what description you gave the police offhand?

A. I told them he had on light blue trousers, a dark shirt with gold or yellow figures on it.

Q. Did you tell them your impression of his age?

A. Yes, sir, I guessed between seventeen and twenty-five.

Q. Did you tell them whether he was short, or tall, do you remember?

A. I don't think I ever gave a definite size I thought he was, but I believed he was taller than my husband.

Q. How tall is your husband?

A. About five nine and one-half.

Q. Did you give them your impression of the attacker's weight?

A. Yes.

Q. What weight?

A. I said I didn't know exactly, and I happened to see some one in the room who was about the same weight, whom I thought was about the same weight.

Q. Did you subsequently learn how much that person weighed you picked out?

A. No, I didn't.

Q. So you don't actually know the weight he might be. Is your house on Cleveland Avenue very close to other houses?

A. Yes, it is close to one hou.e.

Q. Just on one side, on the other side it isn't close?

A. On the other side it is not very far, but some slight distance.

Q. How far would you say the house next to you on the closest side is from your house?

A. About six to eight yards.

Q. And on the other side?

A. Twenty yards.

[fol. 268] Q. About twenty yards away?

A. Yes.

Q. This attack took place in July of 1952, about August?

A. About August.

Q. Were your windows and doors open?

A. My front door was open, but the screen was latched. The rest of the windows were closed.

Q. The front door was open and the screen was latched and the rest of the windows and doors were closed?

A. Yes.

Q. I don't believe you remember how the intruder came in; did you make that statement?

A. I don't know.

Q. You don't know whether he came in the front door or one of the windows?

A. No.

Q. When you said the windows were closed, you mean the glass portion of the window was closed too?

A. Yes.

Q. You say he took some money from your purse?

A. Yes.

Q. Did he take it himself, or did you hand it to him yourself?

A. He made me open my pocketbook and he took the billfold and got the money out of it.

Q. He himself took the billfold out?

A. Yes.

Q. You are sure he took the billfold out?

A. I am positively sure. I know he picked up the pocketbook and handed it to me and I opened it. I don't know whether I handed him the billfold or he took it out.

Redirect examination.

By the Solicitor:

Q. I will ask you one further question. I believe you testified on Cross Examination when you went down and identified him, and did identify the defendant, that he was in the room by himself?

[fol. 269] A. I believe he was.

Q. And you looked at him through—a glass?

A. Yes.

Q. Did you subsequently talk to this defendant?

A. Yes.

Q. And do you base your positive identification both on looking at him and by conversation?

Lawyer Hall: We object to the method of examination of this witness. Counsel is leading the witness.

The Court: I agree with you. It is leading. She said she did identify him, and I sustain the objection, to going any further into it.

Lois Struchko, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the jury, please.

A. Mrs. Elmer Richard Struchko.

Q. Where do you live?

A. 3563 Princeton Drive.

Q. In the City of Montgomery?

A. In Montgomery.

Q. Where were you living on July 28, 1952?

A. At 3846 Cleveland Avenue.

Q. In the city and county of Montgomery?

A. In Montgomery.

Q. Who was your next door neighbor?

A. Mrs. Roundtree.

Q. Did you have a neighbor on the other side?

A. Yes, sir. Military personnel, but I have forgotten their names.

Q. Do you know where Mrs. Crowder was living at that time?

A. She was living with Mrs. Roundtree.

Q. And then she was living next door to you; is that right?

A. Yes, sir.

[fol. 270] Q. Did you see Mrs. Crowder on the morning of July 28, 1952?

A. Not until she came to my front door.

Q. She came to your front door?

A. Yes.

Q. Do you know about what time it was when she came to your front door?

A. I can only say approximately. It was approximately twelve-forty.

Q. Twelve-forty?

A. Yes.

Q. In the day time?

A. Yes.

Q. That is twelve-forty P. M.?

A. Yes.

Q. Could you describe what condition she was in when she came to your front door?

A. She was crying, she was bleeding from the head.

Q. Where on the head, if you remember?

A. I don't know which side. I cannot remember which side, but on the side of the head. She had bruise marks all over her face and she was more or less in a state of hysteria.

Q. Did she complain of being raped?

A. She did.

Lawyer Hall: We object to that as not proper examination of the witness. We suggest counsel ask her what she complained of, not lead the witness, and he is suggesting the answers.

The Court: Counsel has objected to the form of the questions as being leading. You may re-phrase the form of your question.

By the Solicitor:

Q. After she got to your house what did you do?

A. I told her to come in and put her on the couch and told her I would call the police and her husband, which I did.

Q. Did you do anything else?

A. I gave her a little bit of amonia, spirits of amonia in water, to try to calm her down, and one codine tablet, and [fol. 271] applied cold compresses to her head and to her face.

Q. Do you remember how she was dressed?

A. As best I remember, she had on brown loafers, a flowered housecoat, a bra, I believe, a garter belt.

Q. How long did she remain at your house?

A. I wouldn't know the exact time because I had to keep her there until the police gave me permission to take her to the hospital out at Maxwell.

Q. You took her to the hospital yourself?

A. Yes, sir, I did.

Q. Did anyone else come to the house?

A. Not until the police arrived.

Q. How many police came, do you remember?

A. I think possibly two. I remember Mr. Jones. I don't remember the other man.

Cross-examination.

By Lawyer Hall:

Q. I believe you stated you lived right next door to Mrs. Roundtree?

A. Yes.

Q. A lady by the name of Mrs. Roundtree?

A. Yes.

Q. Do you know whether Mrs. Roundtree was home on this day you have been testifying about?

A. She wasn't at home.

Q. Does she regularly work, or did she at that time?

A. She did at that time.

Q. She worked at that time?

A. Yes.

Q. Did she have other persons living in her home besides Mrs. Crowder and her husband?

A. No, sir.

Q. Just the two of them?

A. Yes.

Q. How close is your house to Mrs. Roundtree's?

A. I would say approximately between six and eight yards.

[fol. 272] Q. You had been home all that morning?

A. Yes, sir.

Q. You were at home all that morning?

A. Yes, I was.

Q. Did you hear any disturbance in Mrs. Roundtree's home before Mrs. Crowder came there?

A. No.

Q. You didn't hear any noise, did you, to cause you to think anything might be amiss at her house?

A. No.

Q. Did you hear any screams or anything amiss at all until you saw Mrs. Crowder at your door?

A. No.

Q. Did she knock when she came to your house, or did you see her coming?

A. I saw her run across my front yard because I was sewing in the window. Whether she knocked or rang the bell, I don't know, but I met her at the door.

Q. Do you recall that day sufficiently to tell us what kind of a day it was, whether cloudy, or rainy, hot or cold?

A. Well, I assume it was hot because I had my window fan on.

Q. It is in July of 1952, was it not—I believe that is right—July or August 1952? I am not quibbling over that. It was really warm, about the middle of summer time, wasn't it?

A. Yes, sir.

Q. You had your other windows open?

A. No.

Q. You had the windows closed and the window fan on because it was hot?

A. That is right.

Q. Were you sitting near the front of the house at that time—you were sitting in such a position you could see Mrs. Crowder approaching your home; is that right?

A. Yes.

Q. Does that mean you could see in front of your house; [fol. 273] the street, or what does that mean? I am asking that question because I don't know the position of your house.

A. Both of our homes were facing the east. My window where I was sitting was facing the east, so I couldn't see her house from my window where I was sitting.

Q. Could you see the street in front of your house from that window?

A. Yes.

Q. Could you see a portion of the street in front of her house from that window?

A. I wouldn't say I could.

W. R. CLARKE, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the jury, please.

A. Wilbern R. Clarke, Jr.

Q. I wish you would look at this defendant.

A. Yes, sir.

Q. When was the first time you ever remember seeing him?

A. The first time I ever saw him was July the 28th, 1952, between twelve-thirty and one o'clock.

Q. Where?

A. At the corner of National and Cleveland Avenues.

Q. Did you have any kind of a conversation with him there?

A. Yes, sir.

Q. Will you tell the jury approximately what conversation you had?

A. Yes, sir. This man was running up the street toward Fairview—I believe it is in a northerly direction—and signaled for a ride. Just appeared to me no reason why—he was well dressed—that is the reason I acceded.

Q. Where were you when he asked you for a ride?

A. I was at a dead stop at the corner of National and Cleveland Avenues.

Q. Did you give him a ride?

[fol. 274] A. Yes, sir.

Q. Where did he sit in the car?

A. He sat in the rear seat.

Q. Do you remember how he was dressed?

A. Yes, sir, approximately. He had on, as I recall, blue pants, a flowering colored sport shirt and, I believe, a straw hat.

Q. How far did he ride with you?

A. He rode with me from the intersection which I previously named, the corner of Cleveland and National, to the corner of Cleveland and Fairview.

Q. Approximately how many blocks is that?

A. Well, near as I can say, approximately five or six. I have never stepped it off. I assume that it is.

Q. Did you have any conversation with him in the car?

A. Yes, sir.

Q. Do you remember any of your conversation there?

A. Yes, sir. Somewhere in the course of it I asked him where he was going and, as I recall, he said he was going to town.

Q. Going to town?

A. Yes, sir.

Q. Do you remember any other conversation you had with him?

A. Yes, sir. Purely it would be just a coincidence, we had been discussing at the dinner table—I had been home to lunch—about some old clothes we had around the house, how to dispose of them, and I asked this man could he use them.

Q. What did he say?

A. His answer wasn't intelligible to me because he spoke in such a low tone of voice.

Q. Is that the man there? (Indicating) Look at him.

A. Yes, sir.

Q. Where were you employed at that time?

A. With Bower and Black, Surgical Dressings Manufacturer, out of Chicago.

Q. What is the nature of your employment?

A. It was and is as salesman.

[fol. 275] Q. Let me ask you this. Did you report picking this man up?

A. The very next morning, yes, sir.

Q. Who did you report it to?

A. As I recall, the Montgomery Police Department. I called the Police Department.

Q. And reported it?

A. Yes, sir.

Q. After his arrest did you see this defendant at any time?

A. After his arrest I was called by a police officer of the Montgomery Police force—I don't recall the name—and asked to come down and look at a man they had in the jail to see if it was the same one I had picked up on that particular occasion, the man I——

Q. Don't repeat any conversation. I want you to tell whether you looked at this man.

A. I was summoned down, as I recall, twice. The first occasion they didn't have this man. On the second occasion they did have.

Q. You looked at one man before you looked at this one?

A. Yes, sir.

Q. Do you know how long that was before?

A. No, sir. The time is obliterated from my memory. I cannot recall.

Q. Do you remember when you saw this man?

A. I couldn't name the date. It was sometime after the previously mentioned incident when I picked him out.

Q. Was it before his last trial?

A. Yes, sir.

Q. Now, how did you identify him there at the County Jail?

A. Well, sir, the same way I would identify anyone. By general physical features. That is number one. General body, height, skin color, facial expression. That is one way. And one other way, by direct question.

Q. Please don't repeat any question you asked him. You did have a conversation?

A. Yes, sir.

Q. When you saw him in July of 1952, did he have a mustache?

A. To my recollection, sir, he did not.

[fol. 276] Q. When you saw him in November did he?

A. Sir, I cannot recall.

Cross-examination.

By Lawyer Hall:

Q. Your name is Wilmer or Wilbern Clarke?

A. Wilbern, W-I-L-B-E-R-N.

Q. I thought perhaps your name was spelled Wilmer from the copy of the transcript of the previous trial.

A. No.

Q. As I understand it, sometime in July of 1952, you picked up a colored boy running down Cleveland Avenue in south Montgomery; is that true?

A. That is right.

Q. And you are saying now that this is the man you picked up? (Indicating)

A. That is right.

Q. How can you be so sure?

A. Well, that could be a long discussion. I am equipped with certain faculties for remembering. That is the totality of my reasoning. I just remember a face.

Q. Are you certain of the time?

A. I am certain it was between twelve and one o'clock.

Q. You were going which way on Cleveland Avenue?

A. At the time I saw him I was at a dead stop at the intersection of National and Cleveland.

Q. And can you tell us approximately what the street numbers are there at that intersection?

A. I couldn't.

Q. Could you tell what block it would be on Cleveland?

A. I couldn't.

Q. Do you live in that vicinity?

A. I do.

Q. You are very familiar with that vicinity?

A. You ask me if I am very familiar?

Q. Yes.

[fol. 277] A. Perhaps now. Then I had only lived there approximately eight or nine months.

Q. And you have lived there since that date until the present time?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Could you tell us approximately what the street numbers are out there, National or Cleveland—going north on Cleveland, what block it is?

A. I couldn't.

Q. Do you know what the numbers are on Fairfax and Cleveland going north?

A. Do you mean Fairview?

Q. Fairview. Do you know what street numbers are there?

A. I couldn't.

Q. How close do you live to the corner of National and Cleveland Avenues?

A. About three blocks.

Q. Do you live on Cleveland Avenue?

A. No.

Q. Do you live on an avenue which runs parallel to Cleveland?

A. Yes.

Q. And do the street numbers on your avenue run approximately the same thing as the street numbers on Cleveland Avenue?

A. I don't know.

Q. At the same intersection?

A. I don't know.

Q. Assuming that is true, what is the street number of your block?

A. I live at 3688.

Q. Which street?

A. Oak Street.

Q. How close is that to National Avenue? Does Oak Street intersect National Avenue?

A. Oak Street does intersect National Avenue.

Q. How close is 3688 Oak Street to Oak Street and National Avenue?

[fol. 278] A. I believe there are three house lots.

Q. Three house lots between?

A. Yes.

Q. And running north would the numbers get larger going north or smaller?

A. I don't know.

Q. You say you remember this man from 1952, yet you can't remember those numbers. I am trying to ascertain if I can, sir, the approximate number of the street there, the intersection where you picked up a colored man on July 28, 1952. Assuming for the purpose of this examination that the numbers would get larger going north on Oak Street, then at the corner of Oak Street and National Avenue you would have perhaps the thirty-seven hundred block; is that true?

A. I don't know.

Q. If they got smaller it would be the thirty-five hundred block? How close is Oak Street to Cleveland Avenue and National Avenue, or Cleveland Avenue and National Avenue to 3852 Cleveland Avenue?

A. I couldn't tell you.

Q. I believe you testified just a moment ago that you reported to the police department of the City of Montgomery the day after you picked up a colored boy at National and Cleveland Avenue you had picked up such a boy. Why did you do that?

A. I picked up the paper—I was sitting by the phone—and read of an escaped rapist.

Q. An escaped rapist?

A. As I recall the location, it listed it as being on Cleveland Avenue. I don't recall whether there was a description of the individual, or not, but I felt there was some connection, at least a possibility the man I picked up had a part in that episode. Therefore, I felt I should report it, which I did.

Q. Did you feel the place where you picked up the colored passenger on this day was sufficiently close to the location of this alleged rape as to make you feel necessary to go down and report picking up the passenger?

A. As I have stated, the location was listed in the paper [fol. 279] as having been on Cleveland, I believe. Since I had picked up this person at a street, at a street which intersected with Cleveland, that gave me sufficient reason to believe it could have been that man.

Q. Does Cleveland Avenue run north and south in Montgomery, or east and west?

A. I would say north and south.

A. Approximately how long is Cleveland Avenue?

A. I don't know.

Q. Have you any judgment?

A. No.

Q. Would you say it was several miles long?

A. No. I wouldn't say several. Well, it may be considered long; I would say about two miles, maybe longer.

Q. Two miles?

A. Approximately.

Q. So far as your recollection is concerned, the incident could have happened anywhere on Cleveland Avenue, possibly two miles from where you picked up the passenger; isn't that true now?

A. No. I have stated I believe the street was approximately two miles long—approximately, to the best of my memory and recollection and knowledge, and the intersection I mentioned is not at the extremity of the street so it couldn't have been at least two miles. It was somewhere, perhaps one third the distance from the south end, so it couldn't possibly be approximately two miles.

Q. Approximately what time did you pick up the passenger?

A. Approximately, as I have said, between twelve and one o'clock very definitely, and to the very best of my recollection, along between twelve-thirty and one.

Q. Could you pin it down any closer; would you say it was closer to twelve-thirty than one, or closer to one than twelve-thirty?

A. My recollection would be closer to twelve-thirty.

Q. This man you saw running along Cleveland Avenue, was he running head-long along Cleveland, or jogging along?

A. I would say he was trotting.

Q. He was trotting along?

[fol. 280] A. Yes.

Q. Did he ask you for a ride after you stopped, or how did that happen?

A. He ran toward me, threw up his hand, as I recall, and asked for a ride.

Q. When he threw up his hand and asked you for a ride

was there anything in his demeanor—are you in the habit of picking up hitchhikers?

A. I wouldn't say I am in the habit, but on quite a lot of occasions I stop.

Q. I asked you if you are in a habit of picking up hitchhikers?

A. I wouldn't say that practice constitutes a habit. I would say I have done so frequently.

Q. Is it your custom to pick up these riders to observe them and to come to some conclusion within your own mind what type person you might be picking up, observe their demeanor?

A. I do that to a matter of degree. I am a salesman; I am prone to study people to some extent. To what extent I am perfect, I don't know. But this I do though. I have a tendency to scrutinize people I meet.

Q. On this occasion when Reeves threw up his hand and asked you for a ride was his demeanor pleasant, was he smiling?

A. I recall he had no smile on his face, no.

Q. A blank expression?

A. Very blank.

Q. Noted nothing pleasant about his face at all?

A. I didn't see what I would consider a pleasant expression.

Q. Was it a mean looking face though?

A. I didn't recognize it to be mean or I wouldn't have picked him up.

Q. You just told me there was no smile when he asked you for a ride, no smile or indication of a smile at all?

A. There was no smile.

Q. Was he perspiring?

A. Very heavily.

[fol. 281] Q. Perspiring very heavily?

A. Yes.

Q. His hat was on his head or in his hand?

A. I don't recall distinctly.

Q. Do you remember he had a hat on?

A. I believe he had a hat.

Q. And you were at a dead stop when you first observed him?

A. Yes.

Q. Was there anything about his personal attitude, demeanor, which might give the impression that it would be best not to allow him to enter your car; did you have any such thoughts in your mind?

A. That is a matter of time. When I first saw him, no. When he had actually opened the door and started to get in, yes.

Q. Why?

A. He was perspiring very heavily, and had a very heavy, offensive odor at the time. At first I thought when he came up to the side window I wouldn't allow him to ride, but on second thought I told him to ride in the back seat, which he did.

Q. Was it a very hot day, as you recall?

A. Very hot. Very hot is a relative thing, and every day crudely, as I recall it was a hot day.

Q. Are summers unusually warm, the temperature runs from, let us say, ninety to one hundred and five, in Montgomery County all throughout the summer—in your recollection was the temperature closer to ninety, or was it closer to one hunderd and five?

A. I couldn't say.

Q. You don't recall?

A. I don't recall the temperature.

Q. You do recall that it was hot?

A. I believe it was.

Q. You are not sure?

A. I believe it was.

Q. Do you remember whether it was raining, sun shining, or what?

A. It wasn't raining. As to whether the sun was actually shining, whether it was cloudy, or not, I couldn't say.

[fol. 282] Q. Did you ask him his name at that time?

A. I don't recall asking him his name.

Q. Did you ask him where he lived, what he did for a living?

A. As best I remember, I did ask him where he lived, but I am not sure.

Q. You are not positive whether you asked him, or not?

A. I am not positive.

Q. Aren't positive whether or not he had a mustache?

A. I don't believe he had one.

Q. You wouldn't be sure of that, would you?

A. I don't believe he had one.

Q. You are saying for the record that you don't believe he had one, but we are asking you, sir, if you know whether he had one, or not?

The Solicitor: I object to him arguing with the witness.

The Court: He has a right to ask him if he knows. If he knows he can say yes, if he doesn't he can say no.

The Witness: So I might understand the question, will you please repeat it?

By Lawyer Hall:

Q. Do you know whether or not this defendant had a mustache in July, 1952, as your passenger, colored boy you picked up on July 28, 1952, do you recall whether or not he had a mustache?

A. I really don't have any doubt in my mind about it whatsoever.

Q. Are you sure?

A. I am sure, not any doubt whatsoever.

Q. Thank you, sir. Were you driving a passenger car, station wagon, or what type vehicle were you driving?

A. I was driving a two-door automobile of that current year.

Q. You were?

A. Yes.

Q. Your own automobile?

A. No. The car was owned by my company.

Q. Were there any signs of your company on it?

A. No.

[fol. 283] Q. No markings at all on that car?

A. No.

Q. Are you a native of Montgomery?

A. No.

Q. You haven't been here very long; you had just been in the city, I believe you stated, about eight or nine months?

A. I have been here approximately three and one half years.

Q. Where did this passenger get out of your car?

A. At the intersection of Fairview and Cleveland Avenues.

Q. Is that down town Montgomery?

A. No.

Q. How far is that from down town Montgomery?

A. Precisely how many blocks, I don't know.

Q. Approximately?

A. I would say approximately fifteen, twenty blocks to get down town.

Q. Were you on your way in town that day?

A. As I recall, I was not.

Q. I believe you stated you had some old clothing you wanted to get rid of and thought the defendant might be interested in it; is that right?

A. That is true.

Q. And as I recall you also stated one of the reasons for having picked the man up was the fact he was dressed very neatly; is that right?

A. That is true.

Q. All you could see there was nothing to indicate before he got in the car he was sweating?

A. Before he got in, no.

Q. Perspiring?

A. No.

Q. His shirt wasn't limp with perspiration, perspiration wasn't streaming down his face?

A. It was, but it wasn't apparent at a distance, only after he had actually gotten to the door of the car.

Q. You stopped at the corner of National and Cleveland heading north?

[fol. 284] A. No.

Q. You were not heading north?

A. No.

Q. Which way were you heading?

A. I was heading east.

Q. East on Cleveland?

A. No.

Q. On National?

A. Right.

Q. After you stopped at Cleveland you turned on Cleveland?

A. I turned in on Cleveland.

Q. You were heade" east on National and reached Cleveland, turned in on Cleveland and headed north? When this

passenger came in, this colored boy you picked up, which way did you go when you started off with him?

A. I was running north toward town.

Q. On Cleveland?

A. Yes.

Q. Did you see him before you turned off of National or after you turned off National?

A. Before I turned off National.

Q. You saw him before you turned off of National?

A. Yes.

Q. Did he get in your car before you turned off of National or before you turned into Cleveland?

A. As I recall, he got in before I turned onto Cleveland.

Q. You were going east on National, then going north on Cleveland where National comes into Cleveland, and you first noticed the defendant at the intersection of National and Cleveland when you came to a dead stop—was he then standing approximately at your car, right across from it?

A. He wasn't standing, he was running.

Q. He was still running?

A. Yes.

Q. He didn't stop?

[fol. 285] A. He was still running.

Q. You were at a stand still; is that correct?

A. I don't understand your question exactly.

Q. I think maybe I am confused. I ask the Court to indulge me. I am trying to see this situation and not trying to confuse the witness. I think it best to try again. I understand that National comes into Cleveland, Cleveland goes north and south, National goes east and west. At the corner of National and Cleveland I think you testified you came to a dead stop at the corner—that is the intersection?

A. Yes.

Q. Let us see if we can get at it this way. We are at the intersection, you are at a dead stop, the passenger whom you will pick up is going north on Cleveland. Had you crossed the intersection when you first saw him?

A. No.

Q. Had he crossed the intersection when you first saw him?

A. No.

Q. The intersection of Cleveland and National?

A. No. He was approaching it.

Q. You were at a dead stop there?

A. Yes, sir.

Q. He was on which side of the street as he approached?

A. As I recall, he was on the opposite side of the street. At least, the opposite side of the center. He was out in the street.

Q. He was out in the street?

A. Yes.

Q. Not on the sidewalk?

A. There is no sidewalk.

Q. Along the street line or down the center of the street?

A. Slightly to the opposite side of the center of the street.

Q. When you first observed him and asked you for a ride you didn't see anything amiss, did you?

A. Definitively not.

Q. There was no reason to believe anything was wrong?

A. No.

[fol. 286] Q. And do you recall anything the passenger had done or said to cause you to be reluctant to picking him up?

A. At first sight, no.

Q. I believe you said you went down to the jail on two occasions to identify some persons and among those persons you saw wasn't this defendant?

A. That is right.

Q. And on that occasion were you able to tell the police the person you observed wasn't the one that you had given a ride to?

A. Yes.

Q. You are positive in your statement?

A. The first person they showed to me and asked me if that was the one, I can say definitely it was not.

Q. That wasn't the one? Did you say definitely to the police that wasn't the one?

A. Yes. I said it didn't appear to be the same person.

Q. Did you say you didn't believe it was the one, or didn't appear to be the one, or were you positive he is not the one?

A. I was positive.

Q. I see. On the occasion you saw that boy, this defendant, how many persons were present at that time?

A. To the best of my memory, there was only one officer besides me was present.

Q. Do you recall the date?

A. I don't.

Q. Do you recall the month?

A. I think it was the next month. I could be mistaken. I am not sure.

Q. Would you say August?

A. That would be the next month. This is a case of short memory. It was sometime after they had picked this person up.

Q. Might have been August, 1952; is that right?

A. Yes.

Q. At the time they asked you to come down to City Hall to look at a prisoner and you said it was this defendant [fol. 287] A. No. The jail I went to was the one across the street here.

Q. I don't know which one that is.

A. I am not sure of names. I don't want to become confused with names.

The Court: The County Jail is across the street. The only other jail is the City Jail, which is far removed. There seems to be no doubt the County Jail is the one we are talking about.

By Lawyer Hall:

Q. You said it was possibly in August, 1952. Are you sure of the year?

A. 1952.

Q. Possibly in August, 1952?

A. Wait a minute. You said possibly in August?

Q. I said possibly in August, 1952, you came down to the County Jail and looked at this defendant. At that time did you tell the officers you were positive this is the man you picked up?

A. At the time I saw this man sitting before me I told him I was positive.

Q. Did you tell the officers you were positive?

A. Yes.

Q. How many persons were there, persons, not officers, other than this defendant, when you looked at him?

A. I would answer that by saying I don't recall.

Q. Let us put it this way. Were there other prisoners with that man at the time you saw him?

A. I don't recall.

Q. People there all standing up with him?

A. I don't recall. Do you mean in the same cell?

Q. Yes, sir.

A. To the best of my recollection, no one was in the same cell with him.

Q. At the time you saw him there, wherever it was, he was alone, was he not?

A. I couldn't see the entire enclosure.

Q. No one was standing close to him or in the same room with him?

[fol. 288] A. Is there a difference between cells and rooms?

Q. I don't know. I am asking you these questions.

A. I asked you that question in an effort to give you the correct answer. I want to be sure I know. There was no one in the same cell. Possibly in the same room. I don't remember.

Q. No one in the same cell? This defendant was in a cell in the County Jail at that time?

A. In the jail across the street; which I believe Judge Carter said was the county jail.

Q. He was in a cell; is that right?

A. Yes.

Q. You, of course, saw through the bars of that cell?

A. Yes.

Q. And there was no other prisoner in that cell with him at that time; is that right?

A. No.

Q. And you gave a description to the police immediately after the incident you have testified to. Do you recall the description at this time?

A. I have only an impression of my description. A verbatim report I couldn't give.

Q. State your best judgment, in your best judgment tell us what you told the police.

A. I believe I said he was dressed in a flowery colored sport shirt, some sort of rather loud designs, blue pants, and I believe I think I said he had a hat.

Q. Did you give them any impression as to his age?

A. As to his age at that time?

Q. Yes, sir.

A. Very definitely. I said he appeared to be young.

Q. Young? Did you have any idea of approximately how old he was?

A. If I reported to them his specific age; I don't recall now.

Q. Did you tell them about how tall he was at that time?

A. I don't recall specifically, but I am certain the officers asked me about his height, which is very routine, but specif-

[fol. 289] ically what my answer was I couldn't say.

Q. At the time you picked up that passenger where did he sit in the car, on the front or back seat?

A. In the back seat.

Q. On the back seat, sir?

A. Yes.

Q. What kind of suit did you have on, do you recall?

A. I don't recall the color.

Q. You do not?

A. No.

Q. Do you remember whether you had a hat on, or not?

A. I very definitely had no hat on.

Redirect examination:

By the Solicitor:

Q. I would like to clear up one thought. You testified in this case in the November term of Court of 1952?

A. Yes, sir.

Q. You remember testifying in the case?

A. Yes, sir.

Q. I would like to refresh your recollection as to the date when you saw this defendant in the County Jail. Do you recollect in my examination of you of the date, referring to the calendar which was on the wall similar to that one, which was turned to November, and asking you the question: "You can refresh your recollection on the calendar right here, and I will ask you if you recall what date you saw the defendant in the County Jail?" Do you remember that?

A. I recall the calendar, and I recall I was somewhat confused, and I think, if I recall correctly, I said the 17th.

Q. Referring to the 17th of November?

A. Yes.

Q. That is the date the calendar was turned, the month the calendar was turned to, not the date; do you recall that?

A. Yes, sir. The calendar sheet was turned to November, the month of the trial.

Q. Having refreshed your recollection, can you tell me [fol. 290] now when you saw him over in the County Jail?

A. I couldn't name the date.

Q. You couldn't name the date?

A. No, sir.

Recross-examination.

By Lawyer Hall:

Q. You say you picked up a colored boy passenger at the corner of National and Cleveland?

A. Yes, sir.

Q. In the City of Montgomery?

A. Yes, sir.

Q. You remember that very definitely?

A. Yes, sir.

Q. You recall that?

A. Yes, sir.

4:21 o'clock to 4:37 o'clock P. M.—Recess.

4:37 o'clock P. M. Court re-convened.

Parties present as before noted.

Richard A. Goodwyn, having been duly sworn, was examined and testified as follows:

Direct examination:

By the Solicitor:

Q. State your name to the Court.

A. Richard Goodwyn.

Q. What is your occupation?

A. Deputy Sheriff of Montgomery County.

Q. How long have you been a Deputy Sheriff?

A. A little better than twenty years, going on twenty-one.

Q. Did you attempt to serve a subpoena on Colonel George Harold Kojac?

A. I did.

[fol. 291] Q. In this case?

A. Yes, sir.

Q. For this term of Court?

A. For this term of Court, yes, sir.

Q. Where did you attempt to serve that subpoena?

A. At the legal office at Maxwell Field.

Q. Is that where such subpoenas are served?

A. We have to go to the legal office if we have anybody to be served on the Base.

Q. Did you make a return of that subpoena?

A. Yes, sir.

Q. What return did you make?

A. Not found.

Q. Did you conduct any further investigation to find out where Colonel Kojac was?

A. Not other than the legal office told me he was out of the State, our of the jurisdiction.

Q. Did you also attempt to serve a subpoena on Major Virgil R. Zarling?

A. I did.

Q. And also for this case?

A. Yes, sir.

Q. For presence at this term of Court?

A. That is right.

Q. What return did you make of that subpoena?

A. Not found.

Q. Were you given any information out there as to his present where-bouts?

A. No. They just said he was out of the State, the legal office advised me he was out of the State.

The Solicitor: If the Court please, both the individuals I have just mentioned, Colonel George Harold Kojac and Major Virgil R. Zarling, testified at a former trial of this cause. I have here a letter which was received, in due course of business directed to me, the Staff Judge Advo-[fol. 292] cate of the United States Air Force Headquarters, 3800 Air Wing, Maxwell Air Force Base, Alabama, which reads as follows:

"United States Air Force Headquarters
3800 Air Wing

Maxwell Air Force Base, Alabama

25 February 1955.

William F. Thetford, Solicitor,
Montgomery County, Montgomery, Alabama,

DEAR MR. THETFORD:

Reference is made to subpoenas issued summoning Colonel George Harold Kajoc and Major Virgil R. Zarling to appear and testify on the 8th day of March 1955 in a suit pending wherein the State of Alabama is Plaintiff and Jeremiah Reeves, Junior, is Defendant: In regard to these individuals the following information is furnished:

Colonel George Harold Kojac was transferred to the 4707th Defense Wing, Otis Air Force Base, Massachusetts. He departed this base on or about 27 January 1953. It is understood that he is presently stationed in England.

Major Virgil R. Zarling was relieved from active duty and departed this base on or about 31 January 1953. At that time he gave his future home address as: 3843 James Avenue South, Minneapolis, Minnesota.

Sincerely, (S) William F. Higgins, Major, USAF,
Staff Judge Advocate."

I offer this in evidence.

Lawyer Hall: We are going to object to this being offered in evidence in this cause for the purpose we assume it is being offered, on the grounds that, number 1, the date of [fol. 293] this letter appears to be February 25, 1955, and the Court will take notice of the fact this is May 31, 1955, and whatever the allegations are here in this letter as existing in February, 1955, whether they were true, or not, doesn't mean they are true at this time.

The Solicitor: We were doing it possibly in a backward way. I introduce this letter showing the effort made in February to secure them to testify, and attempt to serve a subpoena on them for this present trial.

By the Solicitor:

Q. Do you know what date it was?

A. It was last week, the first part of last week.

Q. And they were not at Maxwell Air Force Base then?

A. No.

Q. You were told at that time they were out of the State?

A. Yes, sir. Left there some time before and they couldn't be served.

The Solicitor: I can get Major Higgins down here.

Lawyer Hall: We insist Major Higgins be produced. That would be the best evidence.

The Court: This particular letter being dated in February, I don't see how it would establish the fact now. I think you better present testimony with reference to this time, whether they are out of the State, or not.

The Solicitor: All right. We better get Major Higgins here.

By the Solicitor:

Q. Is this the original subpoena? (Indicating)

A. That is right.

Q. In this case?

A. That is right. I executed it.

Q. It is returned on the back "In full except Major Zarling, Colonel Kojac, Not Found?"

A. Yes, sir.

Q. The 24th of May, 1955?

A. Tha is right.

[fol. 294] Q. Those are your initials?

A. That is right.

The Solicitor: We introduce this subpoena and two unserved subpoenas.

(Original subpoena marked "State's Exhibit 1, 5-31-1955, WHL")

(Unserved subpoena to Colonel George Harold Kojac marked "State's Exhibit 2, 5-31-1955, WHL")

(Unserved subpoena to Major Virgil R. Zarling marked "State's Exhibit 3, 5-31-1955, WHL")

Cross-examination.

By Lawyer Hall:

Q. The only thing you wrote on the back, you couldn't serve these subpoenas at the Maxwell Air Force Base, did you not?

A. We went there to serve them.

Q. You didn't attempt to serve them any place else other than there?

A. No. We only went to the legal office. That is where we had to go.

Q. The legal office at the Maxwell Air Force Base?

A. Yes. They told me they were out of the State and we had to mark them "Not Found."

Q. You didn't attempt to serve them any other place?

A. No.

Q. You served all the other persons but the two persons you described?

A. That is the only address we had on them.

Q. Major Zarling and Colonel Kojac?

A. Major Zarling and Colonel Kojac.

STATE'S EXHIBIT 1

STATE SUBPOENA NO.—

THE STATE OF ALABAMA,
Montgomery County:

To Any Sheriff of the State of Alabama—Greeting:

[Vol. 295] You are hereby commanded to summon: personally to be and appear on the day of 19 before the Honorable, the Judge of the next Circuit Court, to be holden for Montgomery County, at the Court House thereof, and there remain during said Court, until discharged by due course of law, to give evidence and the truth to speak in behalf of the Plaintiff in a suit now pending in said court, where the State of Alabama is Plaintiff and Defendant;
and have you then and there this Writ, with your endorsement thereon.

Witness: John R. Matthews, Clerk of said Court, my hand, the day of 19

John R. Matthews, Clerk.

(Reverse side of Subpoena) May 30, 1955, No. 5121, The State of Alabama, Montgomery County Circuit Court, May Term, 1955, The State of Alabama vs. Jeremiah Reeves, Junior, State's subpoena.

STATE'S WITNESSES

Mrs. Richard Struchko, 3563 Princeton Avenue, W. R. Clark, 3688 Oak Street, O. R. Dees, Kilby, Col. George Harold Kojac, Maxwell Air Force Base, Major Virgil R. Zarling, Maxwell Air Force Base, C. N. Johnson, Chief Lab. Supervisor, Maxwell Field Air Force Base, Clyde [fol. 296] Jones, 324 Truett Drive.

Received in office May 17, 1955, M. S. Butler, Sheriff.

Executed by serving a copy of the within subpoena on In Full except Major Zarling, Col. Kojac. Not Found. This 24th day of May, 1955.

By (S) M. S. Butler, Sheriff, (S) G. T. R., Deputy Sheriff.

STATE'S EXHIBIT 2

In case the witness shall wish to charge for his attendance he will please produce to the Clerk, at the term to which is summoned, this copy of his subpoena.

No. 5121

THE STATE OF ALABAMA,
Montgomery County:

To any Sheriff of the State of Alabama, Greeting:

You are commanded to summon Col. George Harold Kojac personally to be and appear in the 30th day of May, 1955, at 9:30 o'clock A. M., before the Honorable the Judge of the Circuit Court of Montgomery County at a Court to be holden for Montgomery County, at the Court House thereof, and there remain during said Court until discharge by due course of law to give evidence and the truth to

speak in behalf of the Plaintiff in a suit now pending in said Court wherein the State of Alabama is Plaintiff and Jeremiah Reeves, Junior, Defendant. And have you then and there this writ, with your endorsement hereon.

Witness: John R. Matthews, Clerk of said Court this 17th day of May 1955.

John R. Matthews, Clerk of the Circuit Court of Montgomery County.

[fol. 297] STATE'S EXHIBIT 3

In case the witness shall wish to charge for his attendance he will please produce to the Clerk, at the term to which he is summoned, this copy of his subpoena.

No. 5121

THE STATE OF ALABAMA,
Montgomery County:

To any Sheriff of the State of Alabama, Greeting:

You are commanded to summon Major Virgil R. Zarling personally to be and appear in the 30th day of May 1955, at 9:30 A. M., before the Honorable the Judge of the Circuit Court of Montgomery County at a Court to be holden for Montgomtery County, at the Court House thereof, and there remain during said Court until discharged by the due course of law, to give evidence and the truth to speak in behalf of the Plaintiff in a suit now pending in said Court wherein the State of Alabama is Plaintiff and Jeremiah Reeves, Junior, Defendant. And have you then and there this writ, with your endorsement hereon.

Witness: John R. Matthews, Clerk of said Court, my hand this 17th day of May 1955.

John R. Matthews, Clerk of the Circuit Court of Montgomery County.

MAJOR WILLIAM F. HIGGINS, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. Your name is Major William F. Higgins?

A. Yes, sir.

Q. You are a member of the United States Air Force?

A. I am.

Q. Where are you stationed?

A. Maxwell Air Force Base, Alabama.

Q. What is your position or title out there?

A. I am the Staff Judge Advocate of the 3800th Air Base Wing which, in fact, makes me the Staff Judge Advocate of the Maxwell Air Force Base, Alabama.

[fol. 298] Q. Do you, or do you not, recollect my contacting you as legal officer of Maxwell Air Force Base several months ago inquiring about the present whereabouts of Colonel George Harold Kojac and Major Virgil R. Zarling?

Lawyer Hall: Before he answers that question we are going to object to the question and his answer on the ground that anything that the Solicitor may have asked him several months ago with reference to the present whereabouts of these two persons would be incompetent, immaterial and irrelevant as to their present whereabouts.

The Solicitor: Let me re-phrase the question.

By the Solicitor:

Q. Did I ask you several months ago as to their whereabouts?

Lawyer Hall: We are going to object to him answering that question as irrelevant and immaterial, and proves nothing. What he asked him several months ago would have nothing to do with their present whereabouts.

The Solicitor: I think I have a right to show it. I am going to show where they were then and where they are now.

The Court: If you connect it up I will overrule the objection.

Lawyer Hall: We would like to take an exception.

The Court: An exception is granted the defendant.

By the Solicitor:

Q. Did you yourself conduct an investigation of your own at Maxwell Air Force Base to find out where they were?

A. Yes, sir.

Q. Did you write me a letter dated the 25th of February, 1955?

A. I did.

Q. Stating where they were?

A. I did.

Q. Will you tell me where they were at that time?

Lawyer Hall: We are going to object to that question and answer as it doesn't make any difference where they were at that time, the answer would be irrelevant, immaterial and prove nothing as far as this evidence is concerned.

[fol. 299] The Solicitor: I will connect it up.

The Court: The Solicitor has stated he would connect it up, and subject to connecting if up, I overrule your objection.

Lawyer Hall: We take an exception.

The Court: You may have an exception.

The Witness: Would you repeat the question?

By the Solicitor:

Q. I asked you what information did you give me as to their whereabouts at that time.

A. I wrote you a letter.

Q. What did you say in the letter?

A. On the 25th of February, 1955, I wrote you a letter stating to you the whereabouts of the individuals so far as our investigation could ascertain at that time.

Q. Where did you say they were?

Lawyer Hall: I am going to object to his answering that question based upon his answer to the previous question, as I understood the witness to state as far as investigation disclosed. He didn't say that he knew where they were at that time.

The Court: Overrule your objection.

Lawyer Hall: We take an exception.

The Court: You may have it.

The Witness: Colonel Kojac was transferred from Maxwell Air Force Base and it is understood that he is presently stationed in England. And that Major Zarling had been relieved from active duty and departed the Base on 31 January, 1953.

By the Solicitor:

Q. Where did he give his home address?

A. 3843 James Avenue South, Minneapolis, Minnesota.

Q. At one time both of these officers were Air Force officers stationed at Maxwell Air Force Base?

A. As far as the information that I received from the Executive Officer of the hospital, Base Hospital at Maxwell Air Force Base, Lieutenant Colonel Slagle.

Lawyer Hall: We are going to object to the answer and [fol. 300] move that it be stricken. This witness doesn't know whether they were at Maxwell Air Force Base.

By the Court:

Q. I want to ask you a question before I rule on this. Did you make this inquiry at the hospital in the official course of your business?

A. I did, sir.

Q. Was it given in the official course of your business?

A. Yes, sir.

Q. Were you informed at that time they were officers in the Air Force stationed at the Base Hospital at Maxwell Air Force Base?

A. I was informed that they were stationed at the Base.

By the Solicitor:

Q. And they had both been transferred?

A. Yes, sir.

Q. As stated in your letter?

A. Yes, sir.

Q. Did you at my request check today to see whether they were, or either of them, at the Maxwell Air Force Base?

A. I did.

Q. Are they at the Maxwell Air Force Base?

A. They art not.

Q. And so far as you know they are both out of the jurisdiction of the State of Alabama?

A. As far as I know, sir.

Q. Your information received in the course of your official business was they both left the State of Alabama?

Lawyer Hall: We object to the answer unless he says he knows.

The Solicitor: He gave that in the letter, and checked——

The Court: I understood the Major to state he made an investigation today?

The Solicitor: He did.

The Court: Why not ask him what happened today?

By the Solicitor:

Q. What did you do?

[fol. 301] A. I called the Base Executive Officer of the hospital, at Maxwell Air Force Base, Lieutenant Colonel Slagle.

Lawyer Hall: We are going to make an objection to anything said over the telephone by anybody who is not here.

By the Court:

Q. I want to know if you made a telephone call to this officer in the regular course of business, in your official capacity as Staff Judge Advocate?

A. Yes, sir, I did.

Q. Did you receive a reply in the ordinary course of business?

A. I did.

The Court: Objection overruled.

Lawyer Hall: We want to object to this witness testifying to any information he received from this person he talked to as hearsay and not competent testimony.

The Court: I overrule your objection. I understood Major Higgins testified that he contacted this officer as Air Force business and talked with him, and it was in the regular course of business and I overrule your objection.

Lawyer Hall: We ask for an exception.

The Court: An exception is granted the defendant.

By the Solicitor:

Q. Do you know Colonel Slagle who was the officer you called over the telephone?

A. Yes, sir.

Q. Know his voice on the telephone?

A. Yes, sir. In fact, I talked to him a total of three times over the telephone today.

Q. Were you informed both these men were not there?

A. I was informed both these men had left the station. Do you want me to go on?

Q. Yes.

A. As far as Colonel Kojac is concerned, they had received some clinical reports from England.

Q. Recently?

[fol. 302] A. Recently.

The Solicitor: That is all.

Lawyer Hall: We are going to move that all of this witness's evidence with reference to these two officer witnesses be stricken on the ground it is hearsay, and incompetent and inimaterial.

The Court: The motion is denied.

Lawyer Hall: We take exception.

The Court: An exception is granted the defendant.

Cross-examination.

By Lawyer Hall:

Q. How long have you been at Maxwell Air Force Base?

A. Since September, 1953.

Q. Were you personally acquainted with the two officers under discussion?

A. Colonel Kojac, I would say no. Major Zarling, the name is familiar to me and I feel I had some business with him, but if you ask me the exact business, I couldn't answer.

Q. As a matter of fact, these men might be at Maxwell Air Force Base other than your records and investigation; is that right?

A. I don't believe they could be because I deal frequently with the hospital and am acquainted with most of the doctors by name, if not personally.

Q. But it is possible, is it not?

A. Let me answer it this way. If they were in what we

call Company Group, I would say yes, sir, but take Field Group Officers, and I feel I would know them if they had been stationed at Maxwell Air Force Base.

Q. It is possible they could be at Craig Field, is it not, at Selma, in Dallas County?

A. From information I have received from the Executive Officer of the hospital I don't believe it would be possible?

Q. It could be, could it not; couldn't both men be at Craig Field at this time and you wouldn't know? That is possible? You don't think it is possible?

A. Based on the information that I have received from [fol. 303] Colonel Slagle I don't feel it would be possible for them to be at Craig Field presently.

Q. I will ask you this question. Ordinarily men are transferred from the medical establishment there—I don't know the proper language—referring to these officers who are doctors—when they are transferred from the hospital on your Base to some other Base, do you normally know of the transfer unless you make it your business to ask?

A. I would say this. I know the Field Group Officers well enough to be fairly well acquainted with them to know who is present at the Base at this time.

Q. You mean you would see them in the normal course of social intercourse, but that doesn't mean that you probably would see them in the course of business in your office, and in the business of your particular position as Judge Advocate on the Base out there. Would you know? Would they give you a copy of the orders moving those men or discharging them?

A. Well, those based on the reservation I have very little social contact with them, but in my official contact as Base Judge Advocate, and particularly the classified security system, or that type of investigation, I would know them more in a business way than I would socially.

By the Court:

Q. You spoke of Field Group Officers. I think we should know what they are. I think I know what they are. Probably some of the jurors do not, not having served in the Armed Services. It think it would be well for the record for

you to explain the difference between Company Group and Field Group Officers for the benefit of some of the jury.

A. A Field Group Officer is a Major and above. A Company Group Officer or Squadron, a Second Lieutenant to and including a Captain.

Q. Are the two men we are talking about Field Group Officers?

A. The two men I am testifying about are Field Group Officers.

By Lawyer Hall:

Q. How many field group officers have you on the Base out there?

[fol. 304] A. On the Base?

Q. Yes, sir.

A. I would say over, usually over two thousand.

Q. Are you personally acquainted with the two thousand of them?

A. I am fairly well acquainted with what we call the permanent party personnel.

Q. How many would that be?

A. A rough estimate would be not over five hundred, I don't believe.

Q. Of all the two thousand Field Group Officers on the Base you are personally acquainted with approximately five hundred?

A. I don't say that. I would say there was that many. Probably not that many Field Group Officers. As I recall your question, how many officers?

Q. In the Field Group?

A. I couldn't give you an estimate what percentage was Field Group.

Q. Of the number of permanent party personnel you said you had personal acquaintance with, do you mean you are personally acquainted with five hundred roughly Field Group Officers?

A. I wouldn't say that.

Q. You meant the total permanent party personnel?

A. That is right.

Q. You didn't mean Field Group Officers?

A. No, sir.

Q. Going back to my original line of questioning; you

probably would know, you say, if any men were transferred although they would be attached to the medical part of the Base, at the hospital, you would know of their transfer anway?

A. Indirectly.

Q. Not as an official part of your business; is that right?

A. It would be definitely official in that several of the department heads live in the hospital. I would know. I know. I can name you about ten Field Group Officers in the hospital. I haven't had association with these two officers.

Q. If I were looking for a particular colonel in the Air Corps, would I come to your office or would I go to the hospital?

[fol. 305] The Solicitor: We object to that.

The Court: I sustain the objection, where you might go;

Lawyer Hall: I will re-phrase the question.

By Lawyer Hall:

Q. If we were seeking to locate a Major or a Colonel who was located or attached to the hospital at Maxwell Air Force Base, would they be located in your office or at the hospital?

A. He would be located in the hospital.

Q. That is the ordinary course; is that not true, sir?

A. It is the ordinary course. When we receive such items as subpoenas and summons from the Courts here in Montgomery, the regulation is that all subpoenas and summons are brought to my office in order that my office may contact the individual, and then the Deputy is given an Air Policeman who rides him over to the individual and serves the summons or subpoena, whatever we have.

Q. Assuming that this man—assuming that we were trying to serve on officer on the Base and he had been previously transferred, which matter you ascertained, and was some months or years ago, assuming he had transferred to another Base in some other part of the country; assuming further after he had served at that base for a period of time he had been transferred again, would you ordinarily know he had been transferred a second time?

A. That would be impossible unless he were returned to Maxwell Air Force Base.

Q. Unless he were returned to Maxwell Air Force Base you wouldn't know where he had gone to?

A. That is correct.

Q. He could be at Craig Field, couldn't he?

A. It would be highly improbable for this reason, if we have a man who is out of the service, or he has resigned, he wouldn't have gone back in the service.

Q. He could be back in, couldn't he?

A. Anything is possible. He is going overseas as of a recent date. Correct me now. He is in England, and the normal tour of duty in England is three years.

[fol. 306] Q. He was in England, I take it, February the 25, 1955; is that right? That is the date of this letter?

A. In my letter I have stated he had departed on 27 January, 1953, for England, and to the best of my knowledge he complied with his orders.

Q. To the best of your knowledge he complied with his orders, and you testify he is in England when you wrote this letter, but you don't know if he is there now, do you?

A. My personal knowledge?

Q. Yes.

A. I don't know.

Q. Any record in your office indicating whether he is there now or was there last month?

A. The only thing, according to my previous testimony, which was from the Executive.

Q. And there is a possibility? That is what I want you to say. When a man is transferred from Maxwell Air Force Base, of course, you don't know where he is, except you know where he went when he left Maxwell Air Force Base?

A. The only way, I would assume he complied with his orders.

Q. You are assuming that; you don't know where he went?

The Solicitor: We object to arguing with the witness.

The Court: We have been over this three or four times. The Major said anything could be possible.

Lawyer Hall: I remind the Court this is Cross Examination.

The Court: The Court don't need to be reminded this is Cross Examination and I have extended you a very wide latitude, but there is a limit, and the Cross Examination is mostly argumentative as far as the Court is concerned.

Lawyer Hall: I don't mean to argue with the Court. This witness has testified to the whereabouts of men he has never seen so far as he knows.

The Court: You have a right to ask him about his knowledge of them. That subject I allow you to ask him.

[fol. 307] Lawyer Hall: Thank you, sir.

By Lawyer Hall:

Q. Do you know where these men are?

A. My personal knowledge?

Q. Yes.

A. No, sir.

Q. Do you know whether Colonel Kojac is down at Craig Air Base in the State of Alabama?

A. I don't know. I would assume he is not, but if he was at Craig the people at the hospital would know.

Q. You don't know whether he is down there, or not?

A. As of my personal knowledge, no.

Q. The officer who is out of the army at the time you wrote this letter you testified is living in Minnesota. Do you know whether or not he is living in Nebraska or Minnesota?

The Solicitor: I am going to object to that question. He has already answered.

The Court: It is repetition. The Major has said personally he doesn't know where he is. If he doesn't know it is reasonable he isn't going to change it and say he does.

By the Court:

Q. Do you know?

A. I have no personal knowledge of these people. This letter just reflects what the physical records would reflect of the Base Hospital at Maxwell Air Force Base.

By Lawyer Hall:

Q. I ask you if you would have records indicating where a man went after he left the place where he is transferred to from Maxwell Base?

The Solicitor: He has already answered that question.

By the Court:

Q. You might as well answer it one more time.

A. Would we have a record of it at Maxwell?

By Lawyer Hall:

Q. Yes, sir.

A. I don't believe so. I think the only place you would [fol. 308] find that would be at the place he would be, or at the world wide record in the Pentagon in Washington, D. C.

Q. If a man were transferred from Maxwell Air Force Base and was transferred from that place to another place, would your records at Maxwell Air Force Base indicate where the man was?

A. It is no requirement to record such information unless he returns to Maxwell Air Force Base.

Q. Were you contacted after your letter of February the 25th by the Solicitor's office of Montgomery County, Alabama, as to the whereabouts of Major Virgil R. Zarling and Colonel George Harold Kojac?

A. Yes.

Q. When?

A. May 31, 1955.

Q. That is today?

A. Yes.

Q. Hadn't been contacted before today and after February 25th, 1955?

A. No, sir.

Q. Tlhis is the first time you have been contacted since February 25, 1955; is that right?

A. Yes, sir.

The Solicitor: I would like to offer in evidence the transcript of testimony of the two doctors who were witnesses in the former trial of this case.

Lawyer Hall: We are going to object to any such offer. We haven't seen the evidence.

The Solicitor: You have got a copy of it over there. You have had it before you two days.

The Court: This official transcript, a copy of it, has been in the hands of counsel since the other trial.

Lawyer Hall: This Court is assuming. We have no copy of anything he proposes to offer.

The Court: It is a transcript of the previous trial.

Lawyer Hall: This. Was the Court referring to that? (Indicating).

[fol. 309] The Court: You have a document here. I am not saying it is or it isn't.

Lawyer Hall: Is it the complete testimony they are offering, or pages of it?

The Court: The testimony of the witnesses, not the entire transcript of the record.

Lawyer Hall: We are going to object to it on several grounds.

The Solicitor: I am proposing to introduce these transcripts; I propose to read from the transcripts into the record the testimony of George Harold Kojac and Virgil R. Zarling. I don't propose to introduce anything except what is written in the record. I purpose to read that part of the transcript to the jury.

Lawyer Hall: We are going to object to him reading anything from these pages, these photostat pages.

The Solicitor: I will let you compare word for word with your copy of the transcript.

Lawyer Hall: We object to the proposed use of a photostat copy of the original transcript on the ground—on several grounds. Number one, it is not the best evidence. That the State hasn't made any offer, sufficient offer, or sufficient showing of an attempt to serve these witnesses. They have simply sent a Deputy Sheriff to Maxwell Air Force Base, the Judge Advocate's office, in an attempt to serve these two witnesses and found them not there. Under the Statutes the State has the right to gt them here on the day of the trial, or make a request to take depositions from these men wherever they were, giving the defendant notice, and giving him the right to take depositions also. Assuming that these pages there represent—assuming for the purpose of argument—the testimony of these men at some previous time, we have no way of knowing that this would be these men's testimony today. They might have been mistaken at that time and might be prepared to show something else at this time. And this defendant certainly has a right to Cross Exam them. This doesn't purport to

be an original copy of the transcript of any proceeding anywhere. We don't know whether this is a true copy, or [fol. 310] not. It is not certified by anyone, the Court Reporter who took this down, showing that it is a copy of his original notes.

The Court: Have you a copy of the official transcript?

Lawyer Hall: I have a copy of some transcript. Whether it is the official transcript, I don't know.

The Court: I want to know if you, as counsel, whether you have the official transcript?

Lawyer Hall: I would like to point out to Your Honor that these pages are not in a bound book, they are separate.

The Solicitor: They are numbered.

Lawyer Hall: Did you number them?

The Solicitor: I did not.

The Court: For the purpose of clarifying this, I would say this is a copy of the original transcript. It would be better for you to confer with the Solicitor and try to determine whether or not this is the official transcript. I see no objection, under the evidence, why the copies should not introduced in evidence.

Lawyer Hall: We are going to object to this on the following grounds. It is not certified as being a true and correct copy of anything. And the defendant has no right of Cross Examination. He had a perfectly good chance to get his witness here, the one in the United States of America, according to the testimony of his own witness, residing in the State of Minnesota, had he tried to get him here.

The Court: The only question in the Court's mind is whether or not the evidence he now desires to offer is from the official transcript of the proceedings at the last time. At this time I am asking, between now and the time Court convenes in the morning you and the Solicitor get together on a copy of the original record. If it is a copy of the original transcript I am going to rule that it will be introduced in evidence. You may have an exception to my ruling on it. I think it would save time if you during the recess do that. If you don't agree, then it is a matter for the Court. Of course, you are both attorneys, and both officers of the Court, and ought to be able to agree upon what the Solicitor is attempting to offer is a copy of the tran-

[fol. 311] script of the previous trial. The Court knows and you probably do, all that is available is a copy of the transcript. I am sure the Solicitor has, and the defendant, copies of the original which was filed in the Supreme Court of Alabama and the Supreme Court of the United States. The previous counsel withdrew the Clerk's copy, and the original is in the file of the Supreme Court of Alabama.

The Solicitor: The numbering of the pages of Colonel Kojac's testimony starts at page 109 here and 94 here, and goes to page 114. And Major Zarling's testimony starts at page 115 and goes halfway through page 119. That is all of his testimony.

Lawyer Hall: We have stated our grounds for objection. There is no use consuming the Court's time for that reason.

The Court: I think if you could agree we could eliminate a great deal of time. I am not asking you to agree; I am simply suggesting about it. For all those concerned I see no harm in trying along that line.

Lawyer Hall: We will do so. We will probably check the same over night, and we want to object to Your Honor's ruling on the admission of them.

The Court: All right.

At this time we are going to take a recess until 9 o'clock in the morning.

Gentlemen of the Jury: During this recess the instructions I gave you at lunch will still hold. You are not to discuss this case among yourselves. And you are not to communicate with anyone, or have anyone communicate with you. You will not read the newspapers, listen to the radio, watch television, or have any kind of communication. You will be in charge of the Bailiff at all times. If you have any messages for your families, you are to give them to the Bailiff and he will be glad to do so. If you need any clothes you will tell the Bailiff and he will be glad to contact your family or relatives.

The Court stands in recess until nine o'clock in the morning.

[fol. 312] 6:01 P. M.

Adjourned until Wednesday, June 1, 1955, at 9 o'clock A. M.

Montgomery, Alabama, Wednesday, June 1, 1955, 9 o'clock A. M. West Court Room.

PRESENT:

The Court, the Jury, The Solicitor and Assistant Solicitor. The Defendant and his Counsel.

The Court: The Court will come to order.

No one is to remain in the Court Room other than the family and relatives of Jeremiah Reeves, Court Officers or members of the Bar, and newspaper, television and radio services. Witnesses and parties in other cases on the docket will leave the room. The docket will be called on the other side before Judge Eugene Carter.

The jury informs me they are having some difficulty understanding counsel for the defense when asking questions. I call your attention to that, and if you will raise your voice a little bit they will not have any concern about hearing everything you have to say.

Lawyer Hall: Thank you, Your Honor.

The Court: At times they are having a little difficulty hearing you. If you will raise your voice they can hear you. Are you ready to proceed?

The Solicitor: Yes.

ROBERT B. STEWART, having been duly sworn, was examined and testified as follows:

[fol. 313] Direct examination.

By the Solicitor:

Q. State your name to the jury?

A. Robert B. Stewart.

Q. You are Deputy Solicitor for this Judicial Circuit?

A. I am.

Q. Did you make a telephone call last night at my request?

A. I did.

Q. To what city did you make that telephone call?

A. Minneapolis, Minnesota.

Q. Who did you call?

A. Dr. Virgil R. Zarling. The call was made at 7:30, both to his home and to his office.

Q. Did he have his home and office listed in Minneapolis, Minnesota?

A. According to Information he did.

Q. Did you reach him?

A. I did not. That call was placed again at 9:30, and still no answer.

Q. Did you call him this morning?

A. I did.

Q. Did you talk with him?

A. I did.

Q. Is he the same Dr. Zarling who was stationed at Maxwell Air Force Base?

A. He advised me that he was Major Virgil R. Zarling, who was previously stationed at the Maxwell Air Force Base Hospital, who testified in this case when it was first tried in this Court.

By the Court:

Q. Is he presently living in Minneapolis, Minnesota?

A. He is presently living in Minneapolis, Minnesota, having come there during July, 1954, until the present day, and is in practice there.

By the Solicitor:

Q. In the practice of medicine?

A. With offices in the Medical Arts Building, Room 1006.

[fol. 314] Cross-examination.

By Lawyer Hall:

Q. I don't understand the purpose for this particular testimony. As I understand it, you called last night, called Dr. Zarling last night?

A. That is correct.

Q. You mean on May 31; is that right?

A. Yes, sir, the night of May 31.

Q. What hour?

A. The call was placed at 7:30, and tried again about 9:30.

Q. That is approximately one day after the State began putting on its witnesses in this cause?

A. It is the same day.

Q. It was one day after the State began putting on witnesses in this cause?

A. No.

Q. When did the State begin taking testimony in this cause?

A. Yesterday, May 31.

Q. Approximately what time?

A. 2:45.

Q. Is that the first time you attempted to call Dr. Zarling?

A. It is.

Q. You hadn't attempted to call him at all since this previous hearing sometime in 1952?

A. I had not.

Lawyer Hall: We are going to ask that this testimony be excluded. We see no purpose in it whatever.

The Court: I overrule your objection for two reasons. First of all, the issue made here, or you have here, and largely made for yourself, I believe, on your Cross Examination of Major Higgins to whether or not it was possible that this particular witness was in Alabama at the present time, or whether he had left Alabama. I understand the testimony today and as of yesterday, it goes back to the last time he left Alabama, not only has he been absent from Alabama during all that time, but at that time in February this officer could not possiblby have served the [fol. 315] subpoena on him personally in Alabama, and I overrule your objection. The Court is satisfied, as to Doctor Zarling, beyond all possibility of doubt, he is not in Alabama.

Lawyer Hall: Then and his present whereabouts?

The Court: Then and his present whereabouts.

Lawyer Hall: We ask for an exception.

The Court: Exception for the defendant.

By Lawyer Hall:

Q. I over looked asking this question. Do you personally know Colonel Zarling?

A. Do you mean Major Zarling?

Q. Yes.

A. I do.

Q. He is a personal acquaintance of you?

A. I have a slight acquaintance with him as a witness in this trial before.

Q. Have you talked with him over the telephone before?

A. I don't have a specific recollection of it, but I believe that I have during the preparation for the trial before.

Q. You believe you recognized his voice over the telephone last night?

A. No, I wouldn't say I did recognize his voice this morning. I had talked to him this morning, not last night, and I wouldn't have recognized his voice. He identified himself as Dr. Virgil R. Zarling, and said he was the former Major Virgil R. Zarling, the same witness who testified in this trial before.

Q. But for his own identification you wouldn't have known who he was, would you?

A. I would not.

Q. When did you first know that Major Zarling supposedly had left his position at Maxwell Field?

A. Oh, probably a week ago.

Q. Did you have access to a letter received by Mr. Thetford, the Circuit Solicitor, sometime in February of this year?

A. I had access to it. I have access to everything in the office.

Q. You didn't read it?

A. I did not.

[fol. 316] Q. You did know a week ago supposedly Major Zarling lived in Minneapolis, Minnesota?

A. That is my best judgment, yes.

Q. As Assistant Solicitor were you very active in the trial of this cause previously?

A. The first time do you mean?

Q. Yes.

A. I was.

Q. Did you argue this case before the United States Supreme Court?

A. I did.

Q. Sometime ago?

A. I did.

Q. You were present when it was reversed by that Court?

A. I was not.

Q. You were before the United States Supreme Court at the time it was argued?

A. I argued the case in the Supreme Court of the United States, yes.

Q. And subsequent to that hearing and that argument the case was reversed?

The Solicitor: I object to that.

The Court: It is a matter of record it was reversed or we wouldn't be trying it again.

Lawyer Hall: We insist he answer that.

The Court: You are not examining him on the point at issue, but refer to something else.

Lawyer Hall: We are going into the previous testimony of this particular witness. I understand his testimony is to be more or less at least tied with Major Higgins as to the whereabouts of this man.

The Court: Under the testimony during the Cross Examination of Mr. Stewart the Court is now satisfied from the evidence Major Zarling is not residing in Alabama, is not a resident of Alabama, but is a resident of and in the state of Minnesota.

Lawyer Hall: The purpose of the defendant's Cross Examination was to show the State knew sometime in Feb-
[fol. 317] ruary of this year that Major Zarling, who was formerly at Maxwell Air Force Base, and one of the State's witnesses in this cause who previously testified in this cause, was no longer at Maxwell Air Force Base, but had his home in Minneapolis, Minnesota, and the State has done nothing from that time to this until last night with reference to getting that witness for the purpose of testifying in this cause.

The Solicitor: That would be completely immaterial. The State has no duty to get witnesses out of the jurisdiction of this State, and has no money to pay for the transportation of witnesses if outside of the State.

The Court: In that regard the Court recognizes the State of Alabama has no jurisdiction over either Major Zarling or Colonel Kojac.

Lawyer Hall: We insist the State had an obligation to itself and to this defendant to at least request the presence of all its witnesses. We realize that the State has no jurisdiction over persons out of the territory of this State, but the State can request the witness to be present, and the State does have the power under the law to take the deposition of any witness.

The Court: I understand admittedly this has not been done, there has been no attempt to take any depositions and I understand there has been no request that either of them be actually returned to Alabama.

The Solicitor: There has been no request made to take the deposition of anyone on behalf of the defendant.

The Court: With these facts admitted, I see no need taking the time of the Court and the jury when they are already in evidence, and I will admit them in the record.

Lawyer Hall: I don't propose to be arguing with the Court, but up until this time we were not aware of the fact the State hadn't attempted or hadn't requested these witnesses to be present. We didn't know they weren't here. They have admitted they haven't requested this witness' presence, although they had known his address since February, 1955, and they haven't attempted to contact him until this trial was in progress. Then we have no further argu-
[fol. 318] ment if you admit that.

The Solicitor: The State doesn't admit that. The State admits it attempted service of a subpoena on this witness at Maxwell Field and were told he had been discharged from the Army, and were informed his home address when he was here in Montgomery at Maxwell Air Force Base was in Minneapolis, Minnesota, and that is all we know.

The Court: Since the attempt to serve the subpoena has there been any demand made upon you for a deposition?

The Solicitor: No.

The Court: Has there been any request made to have him returned to Alabama to testify?

The Solicitor: No.

Lawyer Hall: The defendant has not been requested to agree to a time or place for the taking of depositions from these witnesses as provided by Section 299, Title 15, of the 1940 Code of Alabama.

The Court: You haven't attempted to take the deposition

of the doctor, or haven't requested a deposition of him along that line?

Lawyer Hall: We move to exclude this witness' testimony they attempt to put in as completely irrelevant and immaterial.

The Court: The motion is denied.

Lawyer Hall: We ask for an exception.

The Court: You may have an exception.

John R. Matthews, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Assistant Solicitor:

Q. State your name.

A. John R. Matthews.

Q. What is your position?

A. Clerk of the Circuit Court.

Q. Were you Clerk of the Circuit Court when the case of the State of Alabama versus Jeremiah Reeves, Junior, was first tried?

[fol. 319] A. I was.

Q. How long have you been Clerk of the Court?

A. Twenty years.

Q. Is it the duty, according to the law of this State, rules of the Court when the reporter completes a transcript on appeal he delivers that transcript to you?

A. He does.

Q. Did Mr. Lewis, the Court Reporter, deliver to you the transcript of the record of the case of the State of Alabama versus Jeremiah Reeves, Junior?

A. He delivered to me the original and two copies of it.

Q. What happened to the original?

A. The original went up there to the Supreme Court.

Q. What happened to each of the two copies?

A. One copy under the law goes to the attorney appealing the case, and the other copy has to remain in my office.

Q. What happened to that copy?

A. That copy Mr. Virgil McGee, who represented Jeremiah Reeves at that time, came to my office and asked me to

let him have that copy to prepare a brief; I let him have that copy, and asked him about it at various times after that, and said, "You have the copy out of my office and if something happens to it my office copy will be gone," and he kept telling me from time to time he will take care of the copy. I called him, I suppose, twenty times since then to get it back. He hasn't any telephone here recently and is never in town. I don't know where the copy is, it is just gone. He carried it off as attorney for Jeremiah Reeves at that time to copy it and it has never been returned.

By the Court:

Q. He is a lawyer and was counsel for Jeremiah Reeves?

A. He was a lawyer and prepared the brief and handled the case as it went through the Court.

The Court: The Court is satisfied that he was counsel in this Court and so holds.

By the Court:

Q. What happened to the original copy of the record? [fol. 320] A. Goes to the Supreme Court, or Court of Appeals, which ever it is appealed to.

Q. In this case, the Supreme Court of Alabama?

A. Yes, sir.

Q. Any record sent to the Supreme Court becomes a permanent record of that Court?

A. Yes, it does.

Q. Do you know under the law the original record may not be withdrawn from that Court for any purpose?

A. That is my understanding. Those records are bound in volumes up there.

The Court: This Court takes judicial notice of the fact it is a rule of the Supreme Court the original record may not be taken from the Supreme Court Building in the State of Alabama.

By the Assistant Solicitor:

Q. Did you at my request last night issue a subpoena duces tecum to the Clerk of the Supreme Court of Alabama to produce the original record of the transcript of testimony

in the case of the State of Alabama versus Jeremiah Reeves, Junior?

A. I did.

Q. Did he decline to do so?

A. He called me on the phone this morning and told me Judge Livingston said he could never let that copy go out.

Q. Who is Judge Livingston?

A. He is Chief Justice of the Supreme Court.

By the Court:

Q. Did he tell you it was a rule, an unfailing and uncontroverted rule of the Supreme Court; is that right?

A. That is right.

Major William F. Higgins, recalled.

Direct examination.

By the Solicitor:

Q. This is Major William F. Higgins?

A. Yes, sir.

[fol. 321] Q. You testified yesterday in this case?

A. Yes, sir.

Q. You testified you were the legal officer at Maxwell Air Force Base?

A. Yes, sir.

Q. Now, what is this? (Indicating)

A. This is what we call duplicate original of special orders Number 13, dated 16 January 1953, of Headquarters 3800th Air University Wing, Maxwell Air Force Base, Alabama.

Lawyer Hall: Before this witness testifies further I would like to ask one question.

The Court: All right.

By Lawyer Hall:

Q. After your testimony yesterday did you remain in the Court Room?

A. For a short period of time.

Q. You did remain in the Court Room after your testimony?

The Court: Do you want to raise an objection to him testifying? If you do, the Court will grant it. Do you want to raise an objection to him testifying as being under the rule?

Lawyer Hall: Yes, sir, we do.

The Court: The Major will not be allowed to testify now being under the rule.

By the Solicitor:

Q. Did you hear any testimony yesterday other than your own?

By the Court:

Q. Did you hear any testimony?

A. I didn't hear the testimony of another witness; but did hear an offer of evidence of a witness injected in it.

Q. You heard no testimony from the stand?

The Solicitor: We didn't offer it yesterday.

The Court: Does counsel still insist upon his objection?

Lawyer Hall: The witness was here while the Solicitor and I discussed the former testimony of the two absent witnesses. We object to any testimony from him on this point, and the reason of our objection is he heard us discussing at [fol. 322] that time the offer of proof of the Solicitor.

The Solicitor: There was no testimony that we discussed here. The only discussion was whether it was admissible.

By the Solicitor:

Q. I will ask you this. Did you hear any of the testimony of late yesterday?

A. No, sir.

The Court: I am going to rule in this connection that since counsel has raised the point, and because he did hear argument as to issues involved, he will not be allowed to testify further. This is not in rebuttal of anything that came out since.

The Solicitor: It is not

The Court: Let the record show on objection of counsel

for the defendant Major Higgins is not allowed to testify further about any orders and official statements he has in the matter.

Donald V. Burgess, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name, please.
A. Donald V. Burgess.
Q. You are an officer in the United States Air Force?
A. Yes, sir.
Q. Where are you stationed?
A. Maxwell Air Force Base Hospital.
Q. What is the nature of your job there?
A. Official custodian of all official hospital records, clinical records.
Q. Is this a clinical record which you are custodian of? (Indicating)
A. Yes, sir.
Q. Official custodian of this record?
A. Yes, sir.
Q. What does this record show?

[fol. 323] Lawyer Hall: We are going to object to answering that. We would like to see what it is he shows the witness.

The Court: Counsel has a right to see what ever paper you offer the witness.

By the Solicitor:

Q. This is a clinical record of Lester M. Bennett?
A. Fred B. Bennett.
Q. The attending physician is G. H. Kojac, United States Air Force Medical Corps?
A. Yes, sir.
Q. The registrar is R. A. Ring, Jr., Captain, United States Service Corps?
A. Yes, sir.

Q. The name, and application for medical treatment, 7559th United States Service Hospital, 640, 124, U. S. Air Force?

A. Yes, sir.

Q. With registration number 21788?

A. Yes, sir.

Q. When did you receive this clinical report?

Lawyer Hall: We are going to object to any further answers unless it can be shown just what the purpose of this particular examination is.

The Solicitor: I will be glad to state the purpose of the examination. The purpose of the examination is to show that Colonel Kojac was the attending physician of this patient in England on a date in May of this year.

The Court: Ask the witness what the official records show.

By the Solicitor:

Q. Do your official records show that?

A. Yes, sir. This is the official record. (Indicating)

Q. Could you give the date of that?

A. 16th of May.

Lawyer Hall: We want to find further what the Solicitor intends to do, if he intends to offer this paper into evidence. [fol. 324] The Solicitor: I do not.

Lawyer Hall: I am going to object to this witness discussing the paper or reading from it, unless a better predicate is laid to indicate what it is, where it came from, and why it is here. And, otherwise, we are going to object on the grounds it is hearsay, incompetent, immaterial and irrelevant as far as any issues of this trial are concerned.

The Court: I will let the lieutenant answer each of your questions along that line.

By the Court:

Q. You heard the questions propounded to the Court by counsel for the defendant, and I will give you an opportunity to answer each one of them, if you can.

Lawyer Hall: We are going to object to volantary testimony from the witness and insist the State examine him.

The Court: Objection sustained. Ask the questions, Mr. Solicitor.

By the Solicitor:

Q. Is that an official record?

A. Yes, sir.

Q. Where was that record received from, where did it come from?

A. Came from England.

Q. Does it show that Colonel G. H. Kojac was attending the patient in England on a certain date?

A. It shows he was the admitting doctor.

Q. Also on what date?

A. 16th of May.

Q. Of what year?

A. 1955.

Lawyer Hall: The Court will allow me to question him?

The Court: Certainly.

The Solicitor: I haven't finished my examination.

By the Solicitor:

Q. Did that record come to you in your official capacity as custodian?

A. Yes, sir. It came along with the patient who was [fol. 325] transferred from overseas to this hospital.

Q. Are you custodian of the official orders of medical officers at the hospital?

A. No, sir. I am just custodian of the hospital records.

Q. You wouldn't have anything to do with orders pertaining to the officers?

A. No, sir.

Cross-examination.

By Lawyer Hall:

Q. Do you know who made this record you have been looking at, examining and talking about?

A. It was made in the hospital in England.

Q. Do you know who made it?

A. Who actually made it up over there?

Q. Yes, sir.

A. No, sir.
Q. Do you know it was made in England?
A. I know the signature of the registrar on the right hand side at the bottom.
Q. How do you know it?
A. I knew him in 1948.
Q. Where does it say England?
A. This hospital 6124 is in England.
Q. That is the only thing you find here?
A. Yes.
Q. What is this? (Indicating)
A. Army Post Office, or Air Post Office.
Q. Army or Air Post Office what city?
A. New York.
Q. Does it say England?
A. No, sir.
Q. Do you see England anywhere on here?
A. No, sir.
Q. You surmise it is England?
A. I know definitely it is England.
[fol. 326] Q. You don't see England on here, do you?
A. No, sir.
Q. What does this purport to be, this paper you have been testifying about? (Indicating)
A. This is the transfer record of the patient.
Q. For Colonel Kojac?
A. Colonel Kojac was at the hospital and this shows the treatment over there.
Q. You surmise Colonel Kojac was at the hospital?
A. He was the attending physician.
Q. What is this paper? (Indicating)
A. This is the official clinical record we keep on file.
Q. Of what?
A. Of any patient admitted to the hospital.
Q. What is this record? (Indicating)
A. This is the clinical record covering the patient.
Q. Is that the clinical record of one Lester M. Bennett?
A. Fred B. Bennett.
Q. Fred B. Bennett?
A. Yes, sir.
Q. An enlisted man, is that right?
A. I assume he is.

Q. What is that down here? (Indicating)

A. That is the signature of the attending physician.

Q. This signature? (Indicating)

A. Certifying this to be true, the transfer record. It is certified as correct by the registrar.

Q. You say that it was certified?

A. Yes, sir.

Q. There is no signature on there? (Indicating)

A. No, sir.

Q. What is that up there? (Indicating)

A. G. H. Kojac.

Q. What else here? (Indicating)

A. Colonel, USMC.

[fol. 327] Q. What is that person-fication?

A. Medical Corps.

Q. Colonel, United States Medical Corps?

A. Yes, sir.

Q. Do you know this Colonel Kojac?

A. No, sir.

Q. Ever met him?

A. No, sir.

Q. Do you know what Colonel Kojac does?

A. No, sir.

Q. During a period of twelve months in the Air Corps you wouldn't get to know all the Colonels?

A. No, sir.

Q. You don't know whether this Colonel Kojac lives out at Maxwell Base, or not, do you?

A. No, sir.

Lawyer Hall: I move to exclude everything this witness has testified to as being incompetent, irrelevant and immaterial, and tends to prove nothing.

The Court: Your motion is overruled.

Lawyer Hall: We take an exception.

The Court: An exception granted the defendant.

The Solicitor: I would like to make an offer to introduce Colonel Kojac's transfer orders from Maxwell Air Force Base subject to objection of counsel.

The Court: These papers are not admitted in evidence and haven't been offered.

The Solicitor: No. They are part of the official records out there.

Lawyer Hall: Of course, we object to the offer.

The Court: Let the record show they are marked for identification, and objected to by the defendant, and not admitted in evidence.

[fol. 328] Robert Straub, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Assistant Solicitor:

Q. State your name, please, sir.

A. Robert Straub.

Q. What is your occupation?

A. I am Assistant Attorney General, State of Alabama.

Q. How long have you been an Assistant Attorney General of the State of Alabama?

A. Since 1949.

Q. Were you the Assistant Attorney General who handled the appeal in the Circuit Court of Alabama, in the Supreme Court of the United States in the case of the State of Alabama versus Jeremiah Reeves, Junior?

A. I handled the case in the Supreme Court of the United States, but not particularly in the Supreme Court of Alabama. I didn't brief the case in Alabama.

Q. Were you the responsible Assistant for the progress of the case all during that phase?

A. Yes, sir.

Q. Did you have in your office a duplicate copy, or one of the typewritten copies of the transcript of testimony in the case prepared by the Court Reporter of this Court, Mr. Lewis, and certified by the Clerk, Mr. Matthews?

Lawyer Hall: We are going to object to the answer. He is assuming this is a duplicate of the original.

The Assistant Solicitor: I am not assuming anything.

By the Court:

Q. Did you in your official capacity have, in your opinion, what purported to be a duplicate of the original transcript

of the record of the previous trial in this Court, certified by the Court Reporter and Clerk, and approved by me as Judge of this Court?

A. Yes, sir.

[fol. 329] By the Assistant Solicitor:

Q. What happened to the copy you had?

A. I turned it over to Mr. Virgil McGee.

Q. Who is Mr. Virgil McGee?

A. He is an attorney in Montgomery, and at that time was representing the defendant here.

Q. Have you ever gotten it back?

A. No, sir.

Q. Did you have any particular agreement with Mr. McGee when you turned it over to him?

A. Yes, sir.

Q. What was that agreement?

A. Mr. McGee was to turn over to us a photostat copy of the copy which we gave him in return for letting him or his associates use the copy for preparing a petition for certiorary to the Supreme Court of the United States.

Q. Did he turn over to you such a photostat copy?

A. He did.

Q. What did you do with that photostat copy?

A. We used it in preparing our case before the Supreme Court of the United States.

Q. Do you know where it is now?

A. As I recall, I turned it over to you or Mr. Thetford.

Q. Have you any way of identifying that particular photostat copy?

A. I would have to look at it. I wouldn't say I have any particular way. I think I can tell by certain marks I made on the record.

Q. I show you this photostat copy of the record and ask you if this is the one you turned over to us, and if you can identify it in any way?

A. To the best of my knowledge this is it. There are lines throughout that I recall making on this transcript in connection with going over it with Mr. Thetford, I believe, in preparing our stipulation of the record in the Supreme Court of the United States. We marked throughout here what we would like to show resulting in a short record.

By Lawyer Hall:

[fol. 330] Q. Can you recognize such marks you made?
A. I know we made marks throughout, there are marks on here.

Lawyer Hall: We have no objection.

Cross-examination.

By Lawyer Hall:

Q. If you have such marks, we have no objection if you can positively say you recognize the marks.
A. I can say positively Mr. Thetford and I went through the record of the case when trying to agree with counsel for the defendant as to what should be in a short record in the Supreme Court and we did make marks setting out certain things. Here is one of them. There is a cross here. I imagine we wanted this developed or put in. (Indicating)
Q. From those marks are you sure this is the copy?
A. To the best of my knowledge.

Lawyer Hall: We have no further questions.

W. H. Lewis, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Assistant Solicitor:

Q. Your name is what?
A. W. H. Lewis.
Q. What is your occupation, Mr. Lewis?
A. I am a court reporter for the Montgomery County Circuit Court.
Q. Were you the court reporter who took the testimony in the case of The State of Alabama against Jeremiah Reeves, when it was first tried?
A. I was.
Q. Did you take all the testimony?
A. I did.

Q. Did you take the testimony of Dr. Kojac?

A. I did.

Q. Did you take the testimony of Major Zarling; Major Virgil R. Zarling?

A. I did.

Q. Do you have your notes of the testimony of Colonel Kojac?

[fol. 331] A. They are not available today.

Q. Do you have your notes of the testimony of Dr. Zarling?

A. The same answer would apply to that question.

Q. Where are your notes?

A. I don't know. I don't know where they are. I had a typist who lived in Prattmont. She did my transcribing, and she kept most of my transcribed notes out there.

Q. Then they are not now in your possession?

A. No. She is in France now, and her things are stored. I don't know whether they are at Maxwell Field, or at Macon, Georgia. I think they are at one of those places.

By the Court:

Q. So at the present time, your notes are not available to you?

A. No, they are not. The notes were transcribed, and the cases are filed here. She kept the notes, as a rule. My office room is very cramped.

By the Assistant Solicitor:

Q. Mr. Lewis, I show you a photostat copy of what purports to be the official record of the first trial of the Jeremiah Reeves case, and I will ask you if you can identify this as a copy of the official record which was prepared by you?

Lawyer Hall: Before the witness answers the question, or examines the document, I will object to the question and the answer on the ground that a sufficient predicate has not been laid, before he testifies that as the official court reporter in this court, two or three years ago, he took the notes in the case of The State of Alabama against Jeremiah Reeves, because he does not have his notes with him, and this is not his transcript of those notes, but this

purports to be a photostat copy of some transcript; so we say, Your Honor, that a sufficient predicate has not been laid for the witness to attempt to testify about something that is not within his knowledge, and he did not say he has any way of identifying it.

The Assistant Solicitor: I will withdraw the question. May it please the Court, at this time I offer to show that the typewritten transcript provided by Mr. Lewis, the court [fol. 332] reporter, to the Clerk of the Circuit Court, Mr. Matthews, was borrowed by counsel for Jeremiah Reeves, Jack and Virgil McGee, who needed the original typewritten record to furnish the Attorney General of the State of Alabama; it was borrowed by Virgil McGee, counsel for the defendant, Jeremiah Reeves, explaining the absence of the original typewritten record; and further, that McGee borrowed the original for his use in the certiorari to the Supreme Court of the United States; and he at his own expense, furnished this photostat copy. Is that sufficient? Is that satisfactory to you?

Lawyer Hall: No, sir.

The Court: Do you make that statement under oath, Mr. Solicitor?

The Assistant Solicitor: No; I offer to show that. I haven't any personal knowledge of it, but that has been stated to me by the Clerk, and Mr. Straub, the Assistant Attorney General, who was handling the case. I offer to bring the men in and show that, if counsel for the defense wishes, before we go further on that question, we will summon——

Lawyer Hall: I object. Our knowledge of the circumstances is such that we do not know what happened at that time.

The Assistant Solicitor: I will ask, while we are on that point, to send for the two witnesses.

The Court: All right. It looks like some things might be admitted which can be proved, and the Court knows about some of these things, and that they are facts. He had counsel in the Supreme Court, and that counsel, borrowed, within the knowledge of this Court, a part of the record, from this court, and has not returned it.

Lawyer Hall: I do not deny that, but I could not admit it.

The Court: Then the record would show that you do not

deny that fact, and unless Mr. Stewart wants to prove it, I would say that the records have been delivered, and that is not denied, to the former counsel for the defendant.

Mr. Hall: We cannot admit it, but we do not deny it. We do not have any knowledge of it.

[fol. 333] The Assistant Solicitor: If he don't admit it, I want to prove it.

Lawyer Hall: We do not have knowledge of that transaction.

The Assistant Solicitor: If counsel want to try the case a week, we can do it.

Recess.

10:15 o'clock A. M.

Court Reconvened.

Parties present as before noted.

W. H. Lewis, recalled.

Direct examination.

By the Assistant Solicitor:

Q. You were previously a witness and we showed the location of the original and two copies of the original transcript in the case of The State against Reeves, about which you testified on the stand before.

Now, I show you a photostat copy of what purports to be the original record in the case of the State against Reeves, and ask you if you can identify that as a true and correct photostat of the original prepared by you from your notes that you took at the trial?

Lawyer Hall: If Your Honor please, before the witness answers we would like to have the record show exactly what he is identifying. There are several pages that are not bound together.

The Court: The pages are numbered in serial numbers. I will ask the Solicitor if he checked to see that all the numbers are there.

The Assistant Solicitor: I could answer in this way: I took out part. It was bound until day before yesterday: I took out part and had Mrs. Thomas to check each number. It was for the purpose of having the testimony in more [fol. 334] convenient form for use in court.

The Court: Let's go ahead. He may examine it and give his opinion about it.

Lawyer Hall: We object.

The Court: I overrule the objection.

Lawyer Hall: Your Honor, we want the record to show what he is examining.

The Assistant Solicitor: He is going to count the pages, and see whether they are in consecutive order.

The Witness: I will state they are.

The Assistant Solicitor: I will ask counsel for the defendant to compare this copy with that other copy, and so far as he knows, whether this purports to be a copy of the record and to see whether there is any discrepancy in it. I think you did that last night.

Lawyer Hall: The portion we examined is identical——

The Court: I think if you rather refer to that copy, that is all right.

Lawyer Hall: No, sir.

The Court: Counsel declines to let him see this copy.

Lawyer Hall: He may see it.

The Court: Do you want him to read from that?

The Assistant Solicitor: I would be glad to use it instead of mine.

Lawyer Hall: I don't propose to tell the State which to use. We want the record to show what the witness is examining.

The Assistant Solicitor: I suppose to clarify it and to keep out any possibility of error, we could introduce the whole thing and let me read the answers and Mr. Thetford read the questions. Or either use this defendant's copy and ask the questions, and let him read question by question, which might get through with it.

The Court: I will instruct counsel that if there is any objection to be made, now is the time to make it, if there is any discrepancy.

By the Assistant Solicitor:

Q. Could you identify this as a photostat copy of the [fol. 335] original you—of the original record prepared by you?

A. I could identify my part of it. Mr. Matthews has parts that he puts in there.

Q. I will ask you to specifically look at the testimony of Colonel Kojac and Major Zarling, and I will ask you if these are correct copies of your original transcript.

Lawyer Hall: Your Honor, we are going to object to the answer unless the witness could tell what the whole thing was and whether it is a correct photostat of the original transcript.

By the Court:

Q. Do they show your original page numbers?

A. Yes, they do, on the lefthand side, and Mr. Matthews' numbers are on the right.

Q. Your numbers on the left side?

A. Yes.

Q. And on the right are Mr. Matthews' numbers?

A. Yes.

Q. He was the Clerk?

A. Yes. I will testify the transcript is a complete transcript of the testimony taken on the Reeves trial.

The Court: All right.

By the Assistant Solicitor:

Q. Containing the certificate of the Clerk of this court, Mr. Matthews?

A. Yes, Judge James J. Carter and Judge Eugene Carter are shown on another page of it.

The Assistant Solicitor: That is all.

Cross-examination.

By Lawyer Hall:

Q. How do you know this is a complete transcript of the testimony taken at the previous trial?

A. I know my typewriting and my form. There is nobody in Alabama who sets up the form like I do, with all due respect to my colleague here. I absolutely know that is my transcript, and that this is a correct transcript made from my shorthand notes.

[fol. 336] Q. Do you identify these pages which purport to be photostat copies of the original transcript by the typing and the form?

A. Yes.

Q. Is it possible that something may have been taken out of the transcript?

A. I helped to put this back last Saturday. I helped the Solicitor's secretary to put it back together. It was in the cabinet, and she came for help and I helped to locate it at that time.

Q. Now, would you know, Mr. Lewis,—it is two years after that trial,—whether or not sentences were added, or were taken from it?

A. Show me what you are talking about, and I will tell you?

Q. Suppose we turn to a page which has been offered, 83 on the right and 68 on the left. We are looking there at this paragraph of the photostat copy. Could you say that a certain word has been added in this paragraph, or not added?

A. I will say no.

Q. You could not be certain about that, could you?

A. I could be certain. There is not another typewriter like mine here.

Q. Are you sure about that?

A. Yes.

Q. Do you do your typing?

A. I do not. I have it typed.

Q. When you say no, you mean not that?

A. I had my typewriter.

Q. Your typist made the transcript?

A. That type is different from anybody else's.

Q. But is it possible that somebody may have used that type and added a word, or taken a word away from that sentence?

A. No.

Q. Why do you say that?

A. You look through there. That is a clean copy all the way through. You won't find anything added. There is no use in my arguing with you on that. It is ridiculous.

Q. No. I don't want you to argue.

[fol. 337] A. You are arguing.

Q. That is a simple question, it being if you know whether or not it is possible for a sentence to be added on that paper, or taken away?

A. You could find out for yourself. You would not have the same type I have.

Q. We will have to ask you to answer the question.

A. Do you want me to go through every page? It will take hours, but I will do it.

Q. I don't want you to do that.

The Court: I don't know how much further you could go. He stated it is his best judgment, it is a copy of the record. If you are going to charge the record has been fraudulently made, that is a serious charge. You do not allege fraud?

Lawyer Hall: We do not insinuate there is fraud. We simply say the defendant is entitled to every protection of the law; every protection the court can offer.

The Court: And he will get it in this court.

Lawyer Hall: Where is the evidence? The only piece of evidence to be offered,—the state offered secondary evidence, and we have to be absolutely sure there is no possibility——

The Court: The Court is satisfied with the kind of evidence, and if I am in error I will be reversed by the Supreme Court of the United States, and the Supreme Court of Alabama.

The Witness: You know a court reporter has some rights, the same as the defendant.

The Court: There is no use in arguing with each other.

The Solicitor: The State would like to read into the record the testimony of George Harold Kojac, which commences on page 109 of the record, it having been shown to the Court that George Harold Kojac was duly subpoenaed as a witness in this case, the subpoena having been returned "Not Found," and evidence having been presented to the Court that Colonel Kojac was transferred from Maxwell Field in January, 1953, was known to be in England as of May 16, 1955. And further, that the ordinary tour of duty

[fol. 338] in England under his type of orders is three years.

Lawyer Hall: We object to this offer on several grounds. The State has attempted to prove the entire transcript of the testimony taken in the previous cause, what purports to be a photostat copy consisting of several loose pages contained in two paper folders, and at the end of which we have the certificates of the official court reporter, of the Clerk, and Your Honor as Judge. They are all loose pages. The transcript itself, the entire transcript, hasn't been offered into evidence. We insist, if he is going to offer any portion of this transcript, he would offer, make an attempt to offer the entire transcript, otherwise the official certificates will not be offered.

We object to his offering the testimony of these two absent witnesses, or offering the testimony of these two absent witnesses in evidence in this cause, further, on the ground, first, that it is what purports to be a photostat of a typewritten copy of the original testimony, in the case of the State of Alabama versus Jeremiah Reeves, tried in this Honorable Court in 1952, as hearsay, and not the best evidence, that it is secondary evidence, and as such is incompetent; that if the State of Alabama is allowed to offer this evidence in this cause it will deprive this defendant of his constitutional rights of Cross Examination of any witnesses offered by the State against him in this cause; that if he is not allowed the privilege of Cross Examining any witness who testifies against him in this cause he will —deprived of his right of due process of the law, and equal protection of the law granted to him by Statutes and the Constitution of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America. Assuming that this is the testimony of the absent witnesses as of November, 1952—I wasn't of counsel at that time—assuming that he had very good counsel, which we will admit, and he was properly represented in this Court by counsel, we have no way of knowing that the testimony of these witnesses at that time would be the testimony of these witnesses at this time. We don't say it is probable, but it is possible that the witness' testimony might have [fol. 339] changed over the years, they might have on reflection decided the testimony given at that time was in

error and might have possibly testified differently at this time. The State has made no showing that they have tried to contact these men after January of 1955, although they knew where they were, never even sent them a letter or attempted to call them on the telephone until last night after this man had been on trial for his life. The State of Alabama says they have no money for his railroad fare from Minneapolis here, and with this man's life at stake they couldn't spend three cents to get pertinent testimony. They could ask this defendant if he would agree to the taking of depositions, and taking our depositions at the same time. This he had the right. He had no right to assume we wouldn't agree. He had no way of knowing what Doctor Kojac and Doctor Zarling would say when taking their depositions; he didn't know whether they would testify for the State or for Jeremiah Reeves, Junior. The acceptance of that secondary evidence will be a violations of this man's fundamental rights. We object further on the ground the State hasn't raised any predicate for the offer of secondary evidence. We meant under certain circumstances where a witness testified previously, for whatever it is worth that testimony may be offered upon a certain showing by an affidavit on the part of the State, and that the witness cannot be here, and without this the testimony would be lost. But the State must go a little bit more than the service of an original subpoena. The State would then forfeit the set rule this Honorable Court follows. They have served only one subpoena at the Maxwell Air Force Base legal office, not the hospital, the legal office, and upon the return of that subpoena "Not Found," that is all they have done. That is all they have done in this Court. They wrote a letter in January of 1955. On February 25, 1955, they were informed of the whereabouts, or the presumed whereabouts, of these two witnesses. They didn't do anything at that time to get them here. They come into this Court and offer secondary evidence, and not the best secondary evidence, they don't offer the original copy of the transcript, they offer a photostat copy of a copy of the original transcript. Four or five people have handled this since it was taken down by Mr. Lewis, the man who tran-
[fol. 340] scribed it. They could have—I don't know—they could have included an extra page, or left out one,

for the purpose of argument. It has been copied, re-copied, and photostated, and it is now offered in this Court to prove the testimony given two years ago, which may not be the testimony of men who are living today, and they are available to the State of Alabama, and to this defendant on Cross Examination. No man in this Court Room would want his life in jeopardy on such evidence. We all know to be a fact some witnesses sometimes change their testimony, which in many cases has been sufficient for a new trial. This defendant is entitled every precaution. We object to any offer here of the evidence of these two men on the grounds given, primarily, on the ground it would deprive him of the fundamental right to a fair trial and due process of law, and of equal process of law given and guaranteed him under the Fourteenth Amendment of the Constitution of the United States.

The Court: Does the Solicitor wish to be heard?

The Solicitor: I don't believe so.

The Court: The objection is overruled.

Lawyer Hall: We except.

The Court: Exception granted the defendant.

Testimony of George Harold Kojac, a witness for the State on November 28, 1952, offered in evidence, the questions being read by the Solicitor, the answers by the Assistant Solicitor, as follows:

GEORGE HAROLD KOJAC, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. Will you state your name to the Jury, please.
A. George Harold Kojac.
Q. You are an officer in the United States Air Force?
A. That is right, sir.
Q. What is your occupation?
A. Lieutenant Colonel.
Q. You are a medical doctor?
[fol. 341] A. That is right, sir.

Q. What institutions of higher learning have you attended and what degrees have you obtained?

A. Went to Rutgers University and obtained a B. S. degree; then went to Columbia University, College of Physicians and Surgeons, and obtained a Doctor's Degree, M. D.

Q. In what hospital did you intern?

A. The Morris Ania City Hospital in New York City. And just recently completed a three year residence in obstetrics and gynecology at County Hospital in St. Antonio, Texas.

Q. How long have you been practicing your profession?

A. Since 1938.

Q. Where are you presently stationed?

A. At Maxwell Air Force Base.

Q. Do you know Mrs. Ann Crowder?

A. Mabel Crowder, not Ann Crowder.

Q. That is, the same lady who was on the witness stand.

A. That is right.

Q. Out in the witness room now?

A. That is right.

Q. Have your ever examined her?

A. Yes; I have.

Q. On what date did you examine her?

A. On the 28th of July, 1952.

Q. Where did you examine her?

A. In the Obstetrical Clinic at Maxwell Air Force Base.

Q. Approximately what time did you examine her?

A. Five minutes of three.

Q. Will you tell the Jury what her condition was at that time.

A. At that time she was referred to me by the Attending Surgeon for a pelvic examination, and she had numerous bruises, contusions and abrasions of the head and face which had been previously taken care of by the Attending Surgeon. And had abrasions over the left iliac crest.

Q. Where is that?

[fol. 342] A. Over the hip bone. That is the anterior aspect of the left side. I did the pelvic examination, and that, with the exception of the fact that there was some grayish oozing discharge in the vagina, there was no other injuries revealed to the female genitalia.

Q. Could you describe the extent of the bruises, contusions and lacerations you have stated, where were they?

A. I would be describing someone else's findings in that respect. She was examined more closely by the Attending Surgeon and by the neurologist. In view of that fact I asked for a neurological examination, asked for a neurologist to come in to see the patient in question.

Q. Who is that?

A. Dr. Zarling.

Q. Did you take a smear from her vagina?

A. Three smears. One from the vulva, the lips of the vagina, and one from within the uterus, and the other from the viscera prominence, which is the tip of the vagina.

Q. What test was performed?

A. I forwarded the three specimens to the laboratory technician to examine the spermatozoa.

Q. Could you tell what the result of the test was?

Mr. McGee: That is objected to unless he made it.

The Court: If it is a test in the regular course and under his control and he knows the result of the test, he can testify.

By the Court:

Q. Do you know?

A. Yes, sir; I do. Positive spermatozoa. Spermatozoa were found in the specimen.

By the Solicitor:

Q. Am I right in saying you are talking about the male spermatozoa?

A. I am. That is right, sir.

Q. Do you know whether they were living?

A. No motility was noted. Generally they were not living.

[fol. 343] Cross-examination.

By Mr. McGee:

Q. You said you took what you call a smear. Just what is that?

A. A smear of the female genitalia extending backward from the lips of the vagina, and by laboratory examination

to determine any abnormalities which might be found within the vulva, and which includes the uterus and womb, an examination of her reproductive organs, also includes direct physical examination of the surface for any indication of injury, or infection and spermatozoa.

Q. You said no other injuries; some grayish discharge of the vagina, and no other injuries.

A. That is right.

Q. Was that discharge from an injury?

A. No, sir.

Q. Any injury to the upper boundary?

A. No.

Q. How about the lower boundary?

A. No evidence of any contusion.

Q. You testified about this spermatozoa. Do you mean you were there at the time the test was run?

A. I didn't say I knew it was spermatozoa.

Q. I believe when I made an objection to the Court you said you did know.

The Court: He testified that he knew the result of the tests which were made under his direction and under his instructions. He testified the tests showed it was positive spermatozoa.

By Mr. McGee:

Q. Was that test run under your direction?

A. That is right.

Q. Were you there when the test was run?

A. No.

Q. You sent it over to the laboratory to have it run?

A. In our own laboratory. It was taken to the laboratory and given to the laboratory technician.

[fol. 344] Q. Did you take it there?

A. I took the three test tubes.

Q. Did you remain when he ran the test?

A. No, sir.

Q. You didn't run the test on it?

A. No, sir. Excuse me one moment. You asked me did I make the test?

Q. Yes.

A. I directed the test in writing. In other words, I made out a routine slip.

Q. You never remained to see if your directions were carried out?

A. No, sir.

Q. You didn't stay there?

A. Not while the test was being run.

Q. Were you sent a clinical report?

A. I was.

Q. A chemical analysis?

A. Yes, sir.

Q. The testimony you have given is a result of that chemical analysis?

A. Yes, sir.

Mr. McGee: I object to this testimony and make a motion that it be excluded from the record.

The Court: Objection overruled.

Mr. McGee: I would like an exception.

The Court: You may have an exception.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. When you made the statement it was spermatozoa in that smear you took, you are basing your statement on the result of the test sent to you from the lab?

A. That is right.

Q. Who made that test?

A. Mr. Johnson.

[fol. 345] Q. Is he a doctor?

A. No, sir.

Q. Has he any qualified medical training that you know of?

A. I don't know.

Q. You don't know of any medical training that he has had that you know of?

A. I don't know.

Q. You were not there when he made the test?

A. That is right.

Q. The only thing you are testifying to is the result of the test he made?

A. That is right.

Q. You say there was no motility in that spermatozoa, they were not alive?

A. That is right.

Q. You concluded they were dead?

A. That is right.

Q. The fact that there was no motility, is that based on the result of the test of the smear?

A. Yes, sir.

Q. How long does it take spermatozoa to die?

A. It varies in individuals. It depends upon the individual person, and depends upon the individual who generates the spermatozoa.

Q. What is the average time the spermatozoa will continue to live?

A. It would vary.

Q. In the vagina, I mean.

A. It may vary from less than one hour to twenty-four hours.

Q. Would it be an average of less than a day?

A. No.

Q. I am tal-ing about average.

A. I dare say eight to twelve hours.

Q. Eight to twelve hours is the average life time of male spermatozoa in the vagina?

A. Yes, sir.

Q. What time did you have those smears run off?

[fol. 346] A. At approximately a little after three o'clock.

GEORGE HAROLD KOJAC, recalled.

Direct examination.

By Mr. McGee:

Q. I believe you said the laboratory test was sent back to you of these smears, and from reports of the tests you determined there were no live spermatozoas?

A. No motility.

Q. You concluded they were dead from that?

A. That is right.

Q. Is there any way medical science can take a blood test from a human being, any test made of a man to determine

whether or not he is the man who injected that spermatozoa?

A. Not that I know of.

Q. I mean blood test which would compare.

A. Not that I know of. You are referring to typing the type of spermatozoa?

Q. Yes.

A. Not that I know of to ascertain that fact. You are talking about motility?

Q. Yes.

A. Right.

The Solicitor: We will now offer the testimony of Virgil R. Zarling.

Lawyer Hall: Before you offer your next witness the defendant objects to the admission of that testimony into evidence, and moves for its exclusion, and ask the Court Reporter to strike it from the record on the ground it is incompetent, immaterial and irrelevant, it is not the best evidence, the State hadn't laid sufficient predicate for its introduction, and this defendant has no opportunity to Cross Examine the witness.

The Court: The motion is denied.

[fol. 347] Lawyer Hall: We take an exception.

The Court: Exception granted.

Cardis Nathaniel Johnson, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name, please.

A. Cardis Nathaniel Johnson.

Q. Where were you employed on the 28th of July, 1952?

A. Laboratory technician of Maxwell Air Force Base.

Q. Do you still have that employment?

A. Yes, sir.

Q. What training have you had as laboratory supervisor?

A. I have a B.S. degree in microbiology. Biology is the major.

Q. Where did you secure that?

A. Mississippi State College.

Q. How long have you held that position in the laboratory?

A. I have been working in the Armed Forces one way or the other since 1933.

Q. How long have you been chief laboratory supervisor of the laboratory out at Maxwell Air Force Base?

A. Since October 27, I believe, in 1947.

Q. Did you run a test on three smears which were submitted to you by Colonel Kojac on the 28th of July of 1952, those smears having been taken from Mrs. Ann Crowder?

A. Yes, sir.

Q. What did you find from those smears?

A. Found sperm cells, which I determined were live sperm cells.

Q. Were they male sperm cells?

A. Yes, male sperm cells.

Cross-examination.

By Lawyer Hall:

Q. Are you sure those cells were alive when you made the tests?

A. Well, they were still retaining the tail. Sperm cells [fol. 348] are made up of a head and tail, and were still retaining their tail, and there isn't much to a sperm cell when they lose their tail.

Q. How many such tests have you made in the course of your career?

A. That would be innumerable.

Q. How many in the past five years?

A. It will average thirty tests a month, because I test for sterility of men as well as tests of this nature.

Q. Did you report your findings to Colonel Kojac?

A. Yes, sir. When I finished the check I reported it.

Q. And you told him the cells were still alive?

A. Yes, sir.

Q. Are you aware of the fact the Colonel testified that they were not alive?

A. Well, no, I am not. I don't know what the Colonel testified to.

Q. What is meant by motility in spermatazoa?

A. When the specimens are negative we know at that time that they are incapable of causing pregnancy.

Q. And the word motility in specimens, that determines whether or not they are alive or dead?

A. No.

Q. There could be no motility and they still be alive?

A. They could still be alive.

Q. How long does spermatazoa stay alive?

A. That depends on the type of solution or fluid they are in. That is one of the tests we give for sterility.

Q. What is the average length of time they remain alive when they are deposited within the vagina of a female?

A. That I cannot say. I am not a doctor. I don't know.

Q. If I told you that Colonel Kojac testified the spermatazoa was dead at the time of the tests, then you would be mistaken, would you not?

The Solicitor: I object to that. He didn't testify to that. He testified there was no motility.

Lawyer Hall: I would like to read from page 113 of the testimony of Colonel Kojac, which was just read in the [fol. 349] record by the Solicitor of the State of Alabama.

The Court: Go ahead. I will overrule the Solicitor's objection.

By Lawyer Hall:

Q. They would be living?

A. I didn't say whether they would be living as far as his evidence is concerned.

Q. Do you have a copy of the report you made to Dr. Kojac?

A. No. I don't keep copies of them.

Q. Are you testifying from memory?

A. I am.

Q. Have you had time to refresh your recollection?

A. No.

Q. Of your testimony?

A. No.

Q. Do you know where the samples came from you tested at that time?

A. I do not. Colonel Kojac brought them to me.

Q. Have you discussed this with Mr. Thetford?

A. I have never talked to him one moment about it.

Q. Haven't talked with him today or yesterday?

A. Today, yesterday, or no other day.

Q. And you don't have a copy of your report?

A. There is a copy in the record. I don't keep the copies.

Q. Have you consulted that copy recently?

A. No. I haven't seen it since I gave it to Colonel Kojac.

Q. How many smears did you say you tested at the time you made this clinical report?

A. I am not certain of that.

Q. You don't know how many smears you tested?

A. I am not certain of that.

Q. Do you remember whether or not Colonel Kojac remained with you when you were making the tests?

A. I am not certain of that. I believe he stayed in the room. However, I do know I handed him the report personally. It went through no one else's hands. The speci- [fol. 350] mens went through no one else's hands except him and I.

Q. You say he stayed in the room while you ran the test?

A. I am not certain, because it was just a routine test to me at that time.

Q. You do recall making the test, do you?

A. Yes, sir, because I called his attention to it at the time as soon as it was over.

Q. Did you run that test by yourself or have any help?

A. I do practically all the work there myself.

Q. When this particular test was done that day?

A. I don't recollect. I did the test by myself. There might have been someone else as an assistant at the time, but as this was done Saturday they had probably gone at the time the test was run.

Q. When Colonel Kojac referred to a smear, or smears, you don't recall whether it was one or more?

A. I don't remember.

Q. When he gave them to you and asked you to run the test of them what else did he say to you?

A. Just written out on the Colonel's form. I imagine he asked for sperm cells and motility. That is just routine.

Q. Just routine, you made the tests and report and gave it to Colonel Kojac?

A. He told me he wanted the report personally.

The Solicitor: Now we would like to introduce the testimony and read into the record the testimony of Major Zarling, which was given at the previous trial of this cause in 1952 in open court, and also the Cross Examination, a showing having been made that Major Zarling, or Doctor Zarling, was at the time of his testimony in 1952 an officer stationed at Maxwell Air Force Base; that in January, 1953, he was discharged from the service of the United States Air Force, and that as of today he is a practicing physician having his office and his residence in Minneapolis, Minnesota.

The Court: I assume defense counsel objects and he assigns the same grounds as to the testimony of Colonel Kojac.

[fol. 351] Lawyer Hall: We would like to make an additional motion to this testimony.

The Solicitor: Major Zarling was duly subpoenaed as a witness for the State in this cause and this subpoena was returned with "Not Found."

Lawyer Hall: We are going to object to the testimon of Major Zarling—I believe on November 15th, or thereabout, 1952, whatever date the previous trial was in the cause of the State of Alabama against Jeremiah Reeves, Junior—on the grounds, first, that this isn't the best evidence, it is secondary evidence, tertiary evidence; that the defendant will have no opportunity to Cross Examine this witness, as he is entitled to under the Laws, the Constitution of the State of Alabama, the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States of America.

On the further ground that it has not been shown by the State that they have attempted to have this witness present, they having only shown an attempt to serve the original subpoena on Doctor Zarling at Maxwell Base some time early this year, and that subpoena was then returned "Not Found."

On the further ground that it appears that Major Zarling is presently residing in the United States of America and it doesn't appear that he could not have been here in this Court at this time. No showing has been made that the State of Alabama has attempted to get Doctor Zarling

here No showing has been made that the State of Alabama has written anything but a letter requesting his presence here; no showing has been made that the State of Alabama has offered any inducement or attempt to get him here in any way, or attempt to contact him, although they have had his address since February 25, 1955, until last night during this process of this trial, at which time we understand Mr. Stewart from the Solicitor's office attempted to contact him by telephone at his home in Minneapolis, Minnesota, and didn't reach him until this morning. We submit in this argument that the State of Alabama might have attempted to contact him by telephone earlier and might have had him [fol. 352] present in this Court. And that falls on the State to show they exerted every reasonable effort to have this witness present at this time. Now, they want to introduce and read a photostat copy of the proceeding, a photostat copy of the original typewritten copy of the transcript, not the original copy of the Court Reporter in this cause when it was tried previously sometime in 1952.

Further, we object on the ground that this cause has been reversed by the United States Supreme Court, and the testimony of all the witnesses at the previous trial is incompetent for any purpose in this trial. The testimony of Major Zarling in 1952 is incompetent, immaterial, irrelevant, and will serve no purpose. Further, Your Honor, the State contacted Doctor Zarling this morning; the State made no offer to show that Doctor Zarling's testimony today would be the same as it was in 1952. The Deputy Solicitor of the Circuit testified in this cause he talked to him this morning, and we have no way of knowing whether the testimony of this witness would be the same now as it was then.

The Court: Your objections are singularly and severally overruled.

Lawyer Hall: We take an exception.

The Court: Exception granted.

The Solicitor: I will now read the questions from the transcript of the record of the Supreme Court of the United States of America, October Term, 1954, Number 120, Jeremiah Reeves, Junior, Petitioner, versus The State of Alabama, Certiorari, State of Alabama to the Supreme Court of the United States.

The Court: Mr. Stewart is reading from the photostat copy the answers of the witness, and this seems to be a correct copy of the record of the previous trial.

[fol. 352] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 353] VIRGIL R. ZARLING, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. By whom are you employed?
A. By the United States Air Force.
Q. You are an officer in the United States Air Force?
A. Yes, sir.
Q. What is your rank?
A. Major.
Q. What institutions of higher learning have you attended and what degrees have you received?
A. I have a Bachelor of Science, Bachelor of Medicine, and Doctor of Medicine from the University of Minnesota; I have been in post-graduate training at the Baltimore City Hospital, at Johns Hopkins Hospital, Santa Clara University, University of Southern California, and University of Minnesota.
Q. Did you complete training, internship?
A. Yes, sir.
Q. Where?
A. Baltimore City Hospital.
Q. Do you specialize?
A. Yes, sir.
Q. In what?
A. In neurology.
Q. How long have you been practicing medicine?
A. I graduated from school in 1943—nine years.
Q. Have you been continuously practicing your profession since that time?

A. Yes, sir.

Q. Where are you presently stationed?

A. Maxwell Air Force Base.

Q. In Montgomery?

A. In Montgomery.

Q. Did you on July 28th examine a Mrs. Ann Crowder? [fol. 354] A. I did.

Q. Where did you examine her?

A. I saw her initially in the OBGYN Clinic in the Maxwell Air Force Base Hospital, out patient clinic.

Q. What is that OBGYN?

A. Obstetrics and Gynecology Clinic.

Q. Approximately what time did you see her?

A. I don't remember exactly, but it was around three or three-thirty in the afternoon.

Q. What was her condition at that time?

A. At that time she way lying on an examining table in the clinic, at that time she had swelling and bruises on the right cheeck, and the parotid gland area behind the jaw on the right. Swelling of the left cheek over the cheek bone. She had a hemorrhage of the right eye, and she had swelling, much swelling and bruises and lacerations of the right forehead front and rear; had a swollen, red area over the entire back of the head on both sides, with superficial skin lacerations there; had a smal bruise over the bridge of her nose.

Q. Did you find any bruises on her body?

A. She had, I believe, a bruise on one hip. I noticed no others at that time.

Q. Did you treat her, or prescribe treatment for that condition?

A. I admitted her to neurology service at the hospital because of the head injuries, and because of complaint of pains in the head at that time, and as a precautionary measure we admit them to the hospital and observe them for a period of time.

Q. How long did she stay in the hospital?

A. She was discharged the 31st day of July, about three days.

Q. Has she been under treatment for head injuries, for these same head injuries you have described, since that time?

A. I have seen her once since, and did an entire laboratory procedure, to tell if the injury has healed during the period of her crystallization.

Q. Is she still under treatment?

A. No, she isn't under treatment now.

[fol. 355] Cross-examination.

By Mr. McGee:

Q. What do you mean by laboratory procedure?

A. It is a specialized laboratory procedure. We take an electro-cardiogram.

Q. What is the purpose of that?

A. When you do an operation ECG, it is an electrical device which records the electric activity in the brain through the skull and scalp, which indicates the presence of distention of the brain substance, brain cells.

Q. Is it an apparatus by which you can determine whether or not the brain itself is injured?

A. Yes, sir.

Q. Or functioning wrongfully?

A. Yes, sir. It is similar to an electro-cardiogram which are recordings made from the heart. We have this made from the brain. It is a much more sensitive and technical apparatus.

Q. Do you know whether or not you made an x-ray of the head to determine whether there was skull fracture or anything?

A. I am quite sure I did—at least, I ordinarily do—but I don't remember it at this time.

Q. If she had a skull fracture you would remember it?

A. Yes, sir.

Q. Probably she wouldn't be discharged in three days if there had been a skull fracture?

A. Probably.

Q. You say she was discharged about the 31st day of July?

A. Yes, sir.

Q. And said she has been to you once since then?

A. Yes, sir.

Q. Do you know when that was approximately?

A. I think about the 8th of October.

Q. And she is not under treatment now?
A. No.
Q. When you examined her and took this laboratory pro-
[fol. 356] cedure on her at this time in October, did you determine there was nothing wrong with her brain?
A. In October there is an improvement from the previous record. It was not completely resovered then, and not entirely recovered now.
Q. These head injuries you described were apparent to you at that time?
A. Those are notes I made from the chart.
Q. Were those notes made at the time you examined her?
A. No.
Q. You testified from those notes, didn't you?
A. Those are to refresh my memory.
Q. Were they made at the time you examined her?
A. No.
Q. Did you copy them from the chart this morning?
A. No.
Q. When did you copy them?
A. Yes, sir; I believe I copied them this morning.

Mr. McGee: I move to exclude the evidence from the case, his description of the head injuries, on the ground he is testifying from hearsay.

The Court: He has had that paper in his hand testifying openly right from the beginning. The objection is overruled.

Mr. McGee: I would like an exception.

The Court: You may have an exception. You had a right to ask him while he had it in his hand. You always have a right to ask about anything that is in a witness' hand.

Mr. McGee: I didn't know that.

(Exception noted for the defendant by direction of the Court.)

By Mr. McGee:

Q. Anyway, you say she is not now under treatment?
A. No.
Q. Were you with Dr. Kojac at the time he made his pelvic examination?
A. No; I wasn't.

[fol. 357] The Court: I am going to ask that all the testimony read in the record be delivered to the Court for his keeping.

Lawyer Hall: We have an objection to the admission of the testimony before the Court and we can get it on that copy.

The Solicitor: Did we misread it?

The Court: Anything eliminated from your copy?

Lawyer Hall: No, we have no objection to that.

The Court: I want to identify it for myself.

Lawyer Hall: We are going to object to the testimony of Major Zarling and move for the exclusion of it on the ground it proves nothing. There is no testimony, as far as the defendant is concerned, and I recall the reading of it—his examination of Mrs. Crowder, or anything he found, or didn't find, had anything to do with the issues involved in this trial. He simply testified to an examination of Mrs. Crowder. There is no testimony the condition he found had anything to do with this defendant or the issues in this cause. And we move you, sir, it is incompetent for any purpose, it is irrelevant, immaterial, and also it is hearsay. We want to move for its exclusion. I am sure the Court listened to the reading, and there is no——

The Court: I listened to it and compared it over his shoulder to be sure his reading was correct.

Lawyer Hall: I want to say this to the Court. There is no evidence on Major Zarling's part on examining Mrs. Crowder—he found certain injuries to her eye, and Mrs. Crowder told about having sustained as the result of an alleged attack—as far as Jeremiah Reeves is concerned. There is nothing connecting the condition he found with Jeremiah Reeves, nothing whatever. He testified he examined the lady and gave her certain tests and found certain things, but that has nothing at all to do with this defendant. It doesn't prove anything as far as he is concerned, it is incompetent, immaterial and irrelevant.

The Court: Your objection is overruled.

Lawyer Hall: We take an exception to the ruling. And we object further to the admission of this testimony on [fol. 358] the ground that it is secondary hearsay evidence, and the state has laid no predicate for its introduction and it is, therefore, incompetent. Further, that the defendant

had no opportunity for Cross Examination of this witness and that he is, therefore, deprived of his right to a fair trial under due process of law, equal protection of the law granted him by the Constitution and Statutes of the State of Alabama, and the Constitution of the United States of America. We move the exclusion of that testimony, that it be stricken, and the Jury be instructed to ignore and disregard it.

The Court: Your objection is overruled.

Lawyer Hall: We take an exception.

The Court: Exception granted.

The Assistant Solicitor: I want to ask counsel for the defense at the time they followed the reading of the testimony of Doctor Kojac and Doctor Zarling on their copy of the record they found any omissions or any errors in that reading?

Lawyer Hall: No, sir.

Mr. Stewart: Have you anything more to argue about?

Lawyer Hall: No, sir.

C. J. Rehling, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. Will you state your name to the Jury, please?

A. C. J. Rehling.

Q. What is your occupation?

A. State toxicologist, Chief Director of the State Department of Toxicology and Criminal Investigation.

Q. How long have you held this position?

A. Since 1945.

Q. What institutions of higher learning have you attended and what degrees have you received?

A. I attended Auburn, have taken a Bachelor's Degree in Chemical Engineering, have a Master's Degree from that [fol. 359] institution in chemistry; Doctor of Philosophy from the University of Wisconsin; Bachelor of Law Degree from Jones Law School in Montgomery.

Q. How long have you been connected with the State Department of Toxicology and Criminal Investigation?

A. For eighteen years.

Q. I believe you testified you became Director in 1945?

A. I did.

Q. What is the nature of your work?

A. Performing autopsies and scientific aid to law enforcement officers throughout the State in their investigations to see whether or not they have reached the right or wrong deductions.

Q. I will ask you whether or not in connection with the duties of your employment you have made innumerable investigations of crimes?

A. Yes, I have, a great many.

Q. In July of 1952, did you, or did you not, receive a request from the Montgomery Police Department to conduct an investigation at the home of Mrs. Ann Crowder on Cleveland Avenue in the City of Montgomery, Alabama?

A. Yes, I was asked to assist the Police Department in that matter.

Lawyer Hall: We offer to show Dr. Rehling is referring to notes.

By Lawyer Hall:

Q. Are you referring to notes in answering here?

A. I am not referring to any notes. I haven't opened my folder.

The Court: If the witness refers to any notes you have a right to ask him about it, and you will be afforded an opportunity to examine them.

By the Solicitor:

Q. Do you remember when you went out there, out to the home of Mrs. Ann Crowder?

A. I remember the occasion, yes.

Q. Do you remember the date?

A. Not without referring to my notes.

Q. You refer to the notes and tell us what date you went out there?

A. No, I don't have it in this file. I remember it was [fol. 360] during the summer of that year though.

Q. Do you remember who was there with you at the house when you went there?

A. On that occasion I remember Detective Goins; I believe, went with me.

Q. Had you been informed a crime had been committed in that house?

A. Yes.

Q. What was the nature of that crime?

A. Rape.

Q. Did you conduct any kind of an investigation, or make any physical investigation of the inside and the outside at the house?

A. I went over the house very carefully for a matter of physical evidence of such an offense, including the back entrance, and the hall way, and particularly the bed room.

Lawyer Hall: We are going to object to the testimony unless the doctor can tell us more definitely what time he is testifying about. We don't know. He said the summer of that year. We don't know what time during the summer he was there and made this investigation. It is material, pertinent point.

The Court: I sustain the objection along that line. I think you are entitled to know the date.

By the Solicitor:

Q. Do you remember the date?

A. I don't know the exact date. It was the summer of 1952, as I recall. As I remember Mrs. Crowder was there at the time.

Q. She was there at that time?

A. Yes. She came out there.

Q. Can you fix it any more definitely, any more definite date, than it was the summer of 1952?

A. I believe it was the month of July, but I am not certain of that.

The Court: I think counsel's objection is good unless you are able to show when he was there.

Lawyer Hall: If I would say it was in July would be from previous testimony. If it was, or wasn't, in July, I don't know. I would have to consult the record.

[fol. 361] The Court: If you object it is for the witness to

say. I have already ruled with you on that. If for any purpose you want to connect it up you can refer to the previous record.

Lawyer Hall: You are sustaining it?

The Court: Sustain the objection to the time he was down at the house, if he doesn't know the date, or approximate date, or gives some idea of the approximate date he was there. I have ruled with you on that.

Lawyer Hall: I am sorry. I understood you wrong.

By the Solicitor:

Q. When was the first time you ever saw this defendant, Jeremiah Reeves?

A. In November of 1952, it was on the 11th.

Q. Where did you see him?

A. At Kilby Prison.

Q. Did you conduct any examination as to him?

A. Yes, I examined his person at that time.

Q. You examined his person at that time?

A. Yes, sir.

Lawyer Hall: We are going to object to any testimony of any examination of the person of this defendant unless it can be shown it was given by his consent, he had been informed of his right that anything he would say might be used against him, he was informed of his right to get counsel, and that he understood his constitutional rights and privileges. If this examination was made without his express consent we object to it.

The Court: The Court sustains your objection.

The Solicitor: I would like to make a showing of what we propose to prove by this witness.

The Court: You may make a showing out of the presence of the Jury, and the Jury may be excused.

(The Jury retired to the Jury Room.)

The Solicitor: My showing would be to the effect that Dr. Rehling conducted a physical examination of this de- [fol. 362] fendant on November 11th at Kilby Penitentiary; that he observed on one arm of the defendant two scars which would be consistent with scratches made by the breaking of two fingernails. That is all. It is purely a physical examination the doctor made of the defendant.

Lawyer Hall: Unless it can be shown, or the State lays a sufficient predicate, it can be shown the defendant had been informed he didn't have to testify against himself, or he was advised of his rights, when allowing this gentleman to investigate him or make a physical inspection of him, if he wasn't informed fully of his rights, this testimony isn't admissible.

The Court: I am going to sustain the objection.

12:06 P. M.

The Jury returned to the Court Room.

Parties present as before noted.

Clyde E. Jones, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the Jury.

A. Clyde E. Jones

Q. What was your occupation on July 28th, 1952?

A. City Detective.

Q. Did you, or did you not, answer a call to the home of Mrs. Ann Crowder in the morning around mid-day of July 28th, 1952?

A. I did.

Q. Do you remember where her home was located?

A. Her house is the first house that faces Cleveland Avenue off of April Street.

Q. That is in the City of Montgomery?

A. Right.

Q. And in Montgomery County?

A. Right.

[Vol. 363] Q. Did you go to her house or go to some other house?

A. We went to Mrs. Strnchko's house next door. She lives this side, north side of Mrs. Crowder.

Q. Where would Mrs. Crowder's house be located in regard to National Avenue and the intersection, where from the intersection of National Avenue and Cleveland Avenue?

A. What I would term as two good city blocks, two long city blocks.

Q. Was it north or south?

A. It would be south of National.

Q. Which direction is National from Mrs. Crowder's house?

A. It would be north.

Q. And two blocks?

A. Good city blocks.

Q. Could you tell us where Fairview Avenue is located in regard to National Avenue, north or south?

A. It is north of National.

Q. In other words, as I understand your testimony, National Avenue is north of Mrs. Crowder's house and Fairview Avenue——

A. Is still north of National.

Q. Do you know how many blocks?

A. That would be—I have to estimate on this—I would say about five more blocks.

Q. How did you receive word to go to that particular location at that particular time?

A. Over the radio.

Q. Whose house did you go to?

A. Mrs. Struchko's.

Q. Do you know approximately what time you went there?

A. Approximately twelve forty-five P. M.

Q. What did you find when you got there?

A. Well, we walked in the front door. I think I was the first officer to go in the house—and Mrs. Crowder was sitting on a couch, or half lying on a couch there, and Mrs. Struchko was putting some cold compresses on her head. And her left eye was swollen pretty bad, and her left cheek-[fol. 364] was beaten up. In fact, the eye was almost closed. She had some kind of bruises on the right side of her head. She couldn't tell much about it, and she was pretty well suffering with shock.

Q. Did she complain to you she had been raped?

A. She told me she had been attacked and raped, and was pretty hysterical.

Q. Did she give you any description of the man who raped her?

A. She didn't give me directly.

Q. Did you hear any description she gave anyone else?

A. Yes. Was a colored man.

Lawyer Hall: He is testifying about a description she gave someone else and we want to object to that. We have no objection to him testifying to a description given him.

The Witness: This time I am testifying about she told me directly. The description she gave directly to me was it was a colored boy, and he was wearing blue pants or slacks, with a yellow flowered shirt. And that is the only description at that particular time she gave me personally.

By the Solicitor:

Q. Did she give a description to anyone else in the home you heard?

A. No. I think Chief Stanley came in behind me, and I came out, and ordered her taken to the hospital.

Q. Do you know what hospital she was taken to?

A. She was taken to Maxwell Air Force Base Hospital.

Cross-examination.

By Lawyer Hall:

Q. Did you examine Mrs. Crowder's house on that occasion?

A. When I came out of the house I went over to Mr. Crowder's house, and we kept anybody from going in there at all at that particular time.

Q. You didn't go in at all?

A. Not at that moment.

Q. Did you go in later?

A. We went in later after we got hold of the finger print man and asked him to meet us out there, and we did.

[fol. 365] Q. How long was that?

A. It wasn't too long. I would say within an hour.

Q. Did you examine the room in which Mrs. Crowder was attacked?

A. Yes, we did.

Q. Did you find any evidence of a scuffle?

A. There wasn't much evidence of a scuffle in there, but the covers were pretty mussed up, and that is the only

thing that I could say at that particular time about a scuffle.

Q. Did you find any blood on the floor?

A. No.

Q. The furniture disarranged?

A. No, I don't think there was much, only three pieces of furniture in the room.

Q. Did you test for finger prints?

A. I did not.

Q. Did you find Mrs. Crowder's purse there at that time?

A. No, we didn't.

Q. Did you at any subsequent time examine her purse?

A. I never did examine her purse. She claimed she had a watch missing, but that was later found.

Q. The watch was later found at her home?

A. Yes.

Q. At that time did she complain about anything else except her watch was missing?

A. And some money.

Q. And found the watch later on?

A. That is right. The money was missing, and never did find it, and she never did know how much that was.

Q. Do you recall the windows and doors in the house, did you yourself make an examination of the windows of the room in which this alleged attack took place?

A. I didn't make an examination personally.

Q. Do you remember how many windows there are in that room?

A. I think there were two.

Q. Do you recall in your best judgment—I don't know [fol. 366] if you know, or not—do you know whether those windows were open or closed?

A. I don't remember how they were at that time. I wouldn't want to answer that question.

Q. Will you tell us where this bed room is located with reference to the house, on the front part of the house or rear portion?

A. It is on the north east corner.

Q. That is at the front of the house?

A. That is right.

Q. How close is the house next door to this house, have you an impression or recollection?

A. As far as from here to that bannister I presume.

Q. Is there a house on the south side?

A. Yes, sir, the house on the south side sits cat-a-cornered.

Q. There is a front window in the bed room also?

A. A front and side window.

Q. Do you recall when you first entered the room whether or not the shade on the front window was drawn?

A. I don't remember.

Q. But the room was light, you didn't have to put on the lights to see?

A. The room was pretty light.

Q. And this was about twelve o'clock or twelve-thirty in the day time?

A. About twelve forty-five.

Q. Do you recall whether or not it was clear or cloudy, or whether it was raining?

A. The best I remember, it was a clear day.

Q. This house is located in a peaceful, quiet residential section of Montgomery?

A. Ordinarily a residential section.

Q. There is not a lot of noise going on in that community?

A. Not that I know of.

Q. No factory noise?

A. No factories there. It is a residential section.

Q. Very quiet section? I believe that is all.

[fol. 367] The Solicitor: The State Rests.

The Court: We will now take a recess. The witnesses are now excused until 2 o'clock.

Gentlemen of the Jury: You will be taken to lunch, and I want you to bear in mind the instructions I gave you yesterday, not to discuss this case with anyone, or let anyone discuss it with you; you are not to discuss it among yourselves; you are not to communicate with any other person, not to send or receive any communications over the telephone. If you have any messages, give the bailiff the number and he will take care of any messages. You will have to remain together in charge of the bailiff, and you will be back in your seats at 2 o'clock, in custody and control of the bailiff at all times.

The Court stands in recess until 2 o'clock.

12:18 o'clock P. M.

Court adjourned until 2 o'clock P. M.

2 o'clock P. M.

PRESENT:

The Court, The Jury, The Solicitor and Assistant Solicitor, The Defendant and his counsel.

Lawyer Hall: Before we call our first witness we would like to move the Honorable Court to exclude the State's evidence; all of it, individually and collectively, on the ground that the State has failed to make out a case, and has failed to prove the corpus delicti.

The Court: The motion is denied.

Lawyer Hall: We take an exception.

The Court: An exception is given the defendant.

Lawyer Billingsley: We checked the witnesses yesterday. I think some of them were not served or they were not found. I was wondering could we have the witnesses come in?

[fol. 368] The Court: If we keep on calling them we are going to be here a long time. I rather you have some order about it. I think it will probably save time to ask the witnesses to come in and see who is here.

I ruled yesterday the defendant's father and mother were excluded from the rule. I don't know whether the pastor is going to testify, but he would be excused from the rule too.

Lawyer Hall: Several defense witnesses are not here.

The Court: Give me the names and we will have the Sheriff make every effort to get them here.

Lawyer Hall: Frances Hall; Mary Jordan; Elizabeth Alford; J. D. Cooks; James Dolman; J. Lewis Miller.

The Court: He is here.

Lawyer Billingsley: Earl T. James.

The Court: He is in the Dry Cleaning business out here. Mr. James was formerly Police Commissioner. If you want him we will attempt to get him.

Lawyer Hall: Not necessarily.

Lawyer Billingsley: D. C. Hooks; Rebecca Johnson.

The Assistant Solicitor: These people were subpoenaed

by you originally. I don't find all the names on the list I copied.

The Court: We will check with the Clerk's office.

Lawyer Billingsley: Those are the same witnesses who testified at the previous hearing.

The Court: We will have the Sheriff check with the Clerk's office, and will have them here if possible.

Defendant's Evidence

Carmella Reeves, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. What is your full name?
A. My family name Carmella Reeves.
[fol. 369] Q. Are you working at present?
A. Yes, sir.
Q. Tell us where you work.
A. I work at 2214 Carter Hill Road.
Q. What is your occupation?
A. Housekeeper.
Q. You work at a private home?
A. That is right.
Q. What is the name of the family you work for?
A. Family I work for is J. Wren Allen.
Q. Are you a housekeeper, cook, or nurse?
A. I do all.
Q. Have they small children you take care of for them?
A. That is right.
Q. Do you know Jeremiah, the defendant here?
A. That is my son.
Q. How old is he now?
A. Well, he is nineteen now.
Q. When was he born, do you know?
A. He was born on August 8th, 19— I cannot remember the year.
Q. Are you sure he is nineteen now?
A. That is right. I have his birth certificate.

Q. Will he be twenty next August 8th?

A. Next August 8th will be twenty years old. That is his birth certificate.

Q. Do you recall when he was picked up for the offense for which he is charged now?

A. When he was picked up I hadn't left the job.

Q. Do you recall the date, the time and month and year?

A. Sure. November it is, 10th.

Q. November 10th?

A. That is right.

Q. What year?

A. 1953.

Q. 1952 or 1953?

[fol. 370] A. It was 1953—4—5—2.

By the Court:

Q. 1952?

A. Anyway, it has been three years.

Q. You say 1952?

A. It was 1952.

By Lawyer Hall:

Q. Do you remember what day of the week it was?

A. I think it was on a Monday.

Q. When did you first know about it?

A. When I knowed about this?

Q. Yes.

A. I didn't know about it until about ten to four when I knowed about it.

Q. Do you recall July 28, 1952, do you remember that day?

A. July 28, 1952? I don't believe I can.

Q. It might refresh your recollection to tell you that is the date on which the prosecuting witness, Mrs. Crowder, has alleged to have been attacked.

A. I don't know anything about that.

Q. Have you any recollection of that date at all, July 28, 1952?

A. The Monday, I can remember the Monday he was picked up. That other time I cannot remember so much because I left home——

Q. You have testified to the time he was picked up, you said he was picked up November 10, 1952. Now, I am asking you if you remember some time before that, July the 28th, 1952? That is the date on which the witness, Mrs. Crowder, is alleged to have been raped, assaulted. Do you remember that date, have you any recollection of that date at all?

A. I cannot remember anything about it. The only date I can remember was when he was picked up.

Q. You don't know anything about that date, July 28, 1952?

A. That is right.

Q. I will ask you this. In 1952 you were working; and what hour did you go to work and what hour did you cease working?

[fol. 371] A. My hours, eight until four P. M.

Q. Where were you living?

A. Same place then, 35 Gravel Pit Lane.

And in 1952 you say Jeremiah was seventeen years old?

A. Sure.

Q. So that in July of 1952 he would be seventeen, or was he seventeen on August the 8th?

A. August 8th is his birthday. He was seventeen.

Q. So in July he was sixteen; is that right?

A. August.

Q. You have no recollection of July 28, 1952?

A. Not any until they told me they picked him up.

Q. They picked him up in November. We are not talking about the same date.

A. I don't have any knowledge.

Q. You don't recall that date at all?

A. I don't recall that.

Q. After they picked up Jeremiah—what date was it they picked him up, going back to the time they picked him up?

A. I don't know when they pick him up to my knowing.

Q. Do you remember what day of the week it was?

A. On a Monday.

Q. And you learned about his arrest about what time?

A. At about ten minutes to four o'clock. Ten minutes to four I am due there.

Q. How did you learn about it?

A. Over the phone. Then we found the wire was cut.

Q. Found the wire was cut?

A. That is right.

Q. What do you mean by that?

A. They called my phone, then somebody went around the side of the house and cut the telephone wire.

Q. Your telephone wire.

A. My telephone wire.

Q. Somebody called you from your home on your job?

[fol. 372] A. That is right.

Q. Who told you he had been arrested?

A. He hadn't been arrested at that time. They wanted to know if I knowed where he was, and I couldn't tell where he was because I was on the job, and I wanted to know then what had happened. And no one who was there on the wire, they wouldn't help or tell me what happened. And then the telephone wire was cut, and I had to wait until four o'clock to get off.

Q. Then what did you do?

A. At four o'clock I came on home.

Q. What did you find when you got home?

A. Found the police everwhere, all over the house; tore up the house, throwed clothes everwhere.

Q. Was Jeremiah under arrest at that time?

A. Jeremiah wasn' around then, I don't think, because that is when I was asking to see him and they wouldn't let me see him. A few minutes Sheriff Armstrong came around looking for personal belongings. They was looking for personal belongings. He had two cigarette boxes, and they taken them away, and they had taken clothes.

Q. A few minutes after four Sheriff Armstrong came out for his personal belongings?

A. That is right.

Q. Did he tell you at that time Jeremiah was under arrest?

A. They had him, they said.

Q. Did you talk with him that day?

A. Talk with who?

Q. Jeremiah.

A. I didn't see him. He was at Killy.

Q. He was at Killby on that day?

A. They had taken him to Kilby. I never saw him, only the morning when I was leaving for work.

Q. That morning you saw him?

A. That is right.

Q. You saw him the morning they arrested him in the afternoon?

A. That is right.

{fol. 373} Q. After they arrested him did you try to see him?

A. I did.

Q. Did you come down to the County Jail and ask to see him?

A. Not County Jail.

Q. To City Hall?

A. Kilby.

Q. Are you saying then they didn't take him to the County Jail or City Jail?

A. Jeremiah was rushed to Kilby Prison, and I went out there and wasn't allowed to see him that day.

Q. Did you see him the next day?

A. Not allowed to see him that day.

Q. The next day?

A. Not allowed to see him.

Q. When did you see him?

A. Thursday.

Q. You saw him on Thursday after his arrest?

A. I was told by Sheriff Armstrong——

The Solicitor: I object to what Sheriff Armstrong told her.

The Court: I will let her testify.

The Witness: If I go over to Kilby and tell Mr. Dees over there that Sheriff Armstrong told me to tell him to let me see Jeremiah, my son, they would let me.

By Lawyer Hall:

Q. So Thursday was the first day you were allowed to talk to him?

A. Thursday.

Q. On that Monday did they tell you why they had arrested him Monday?

A. No, sir.

Q. Did they tell you Tuesday?

A. No, sir.

Q. Did they tell you Wednesday?

A. No, sir. I wasn't told.

Q. Did you try to talk with him over the phone any of those days?

A. Tried over the phone.

[fol. 374] Q. Over the phone did you call Kilby and ask if you could talk to him?

A. I didn't call, I went. I had my car and went out there.

Q. Did you employ a lawyer and ask a lawyer to go out to see him any of those days?

A. I didn't employ no lawyer then.

Q. Did you after Thursday?

A. After.

Q. After you finally saw Jeremiah, when you finally saw him on Thursday, did you know then what he was supposed to have done?

A. I knowed by reading in the papers. Then when I got in Kilby, told Warden Dees I was his mother, what I came for, and told him I wanted him to tell me if he did this act.

Q. What I want to get, did you know when you got into the prison Thursday what he was supposed to have done?

A. I didn't know what until I read it in the paper.

Q. When you got there you didn't know what he was held for?

A. I didn't know what he was held for, just going by the paper. I didn't know what, only what I saw in the paper.

Q. When you saw Jeremiah did you ask him what he had done?

A. I did.

The Solicitor: I object to any conversation she had with the defendant.

The Court: I think it is self-serving and hearsay, what somebody might have told somebody.

Lawyer Hall: We take an exception.

The Court: All right.

By Lawyer Hall:

Q. How far did Jeremiah go in school?

A. How far did Jeremiah go in school?

Q. Yes.

A. Eighth.

Q. Did he go all the way through the eighth grade?

A. He didn't go all the way through the eighth.

Q. Q. What kind of grades did he make in school?

A. He made good grades in school, very good.

[fol. 375] Q. How were his actions when in school, did he act peculiar in any way?

A. Always has acted peculiar, because he had a lick on his head and he always acted like that way. He sometimes cried frequently when small. Nobody say anything to him, and he cried and yelled.

Q. Do you mean he just sat down and started crying?

A. That is correct.

Q. In what way otherwise was he peculiar?

A. Nervous all the time.

Q. I am asking if he acted in anyways peculiar as a boy and you say he was nervous?

A. That is right.

Q. When you say nervous, can you tell me what you mean, how would he act?

A. I mean, he was shaking like, and get mad at the neighbors, all of us and the neighbors. In other words, he get mad at his sister or brother and me and walkin; out of the house and wouldn't return until late. And we just left him alone, he couldn't stand even loud noise or argument; couldn't argue with him at all about any simple little thing, he just get upset and nervous and walk on out of the house.

Q. When you say he had a lick on the head what do you mean?

A. I mean when he was small he fell there where we was living at and he struck somewhere over here, or here, (indicating), and it swelled up, and it stayed up awhile and went down. We didn't pay much attention to it. We got it down. But he wasn't right, he was nervous after that. During that time we couldn't afford a doctor; we was on the Welfare.

Q. Why did he quit school?

A. Why did he quit school?

Q. Yes.

A. He didn't never just did quit school; he was going into school and was practicing music at the same time.

Q. He was going to school when he was arrested?

A. When he was arrested he was going to school. He had all of his books and he was in school at that time.

[fol. 376] Q. Where was he going to school?

A. Going up here to Booker Washington and teaching music there.

Q. Was he going in the day, or the night, or afternoon, or when?

A. He was going in the day.

Q. What time during the day would he go to school?

A. Well, I believe he went regular, he went regular like children go to school now. I wasn't around there much during the day time because I left around about eight, but I know he would be going to school, and took his books to go. And his father took him back in the afternoon to school. Something came up there he had to go back.

Q. He went to school in the morning; is that right?

A. That is right.

Q. Eight or nine o'clock?

A. That is right.

Q. What time did he get home, do you know?

A. Well, I really don't know, because when I got home in the afternoon around four o'clock he would be there. What time he came in I couldn't just say.

Q. Would that be every day?

A. I wouldn't say it was every day.

Q. Frequently he would be home?

A. He would be home.

Q. Did he have any regular duties at home, anything he had to do?

A. That is one of the reasons why I know he would be home. Cut the wood, and haul water in for me to cook when I got there.

Q. He did that every day?

A. That is right.

Q. How old was he when he fell and got this lick on his head you testified about?

A. How old he was?

Q. Yes.

A. He was around three.

Q. Around three years old?

A. That is right.

Q. Do you remember seeing—let us put it this way—do [fol. 377] you recall Jeremiah during the summer months of July and August of 1952, do you recall seeing any scratches on his arms and his head any time during that period?

A. I didn't see any scratches any place about him.

Q. At no time during that period?

A. No time during that period he didn't.

Q. Did you see anywhere on his arms or about his forehead?

A. He didn't.

Q. Did Jeremiah customarily wear a hat during that period?

A. Jeremiah didn't wear a hat like men, he went bare headed.

Q. Did he own a hat?

A. He didn't own a hat. He did have a cap, but didn't own a hat.

Q. He never wore a straw hat?

A. He never wore a straw hat, no, positively.

Q. Do you recall Jeremiah acting any way unusual, nervous; during this period, any more so than usual?

A. Not more than usual. Just what I told you a minute ago about when he would be nervous with you, get mad at anything, or his sister or his brother. That is the only time I can tell you he was nervous.

Q. In your opinion, is your son sane or insane?

A. My son is insane.

Q. Jeremiah Reeves?

A. I have always said he was insane. I have told him that.

Q. In your opinion then, he is insane?

A. I always have believed it.

Q. When you say insane you don't mean he is vicious, do you?

A. No, I don't. I just mean he is a peculiar creature. I said he just was nervous, to it.

Q. Does your husband work?
A. My husband works for Pop Myer's Delivery Service.
Q. Where did he work in 1952?
A. Same place.
Q. How much money does he make?
A. $25.
Q. How much do you make?

[fol. 378] The Solicitor: I am going to object to that question.

The Court: Objection overruled. For the purpose of showing the circumstance of living?

Lawyer Hall: Yes.

By the Court:

Q. How much does he make?
A. $25.
Q. How much do you make?
A. $15.

By Lawyer Hall:

Q. Both of those per week?
A. Per week.
Q. How many children does that keep?
A. Five.
Q. Is Jeremiah the oldest one, or is he the youngest?
A. Well, he is next to the youngest.
Q. Are the rest of the children working?
A. School.
Q. Were they working or going to school in 1952?
A. School.
Q. Were you and your husband the only persons working in that house?
A. That is correct.
Q. And out of your earnings you have to take care of the entire family?
A. Take both of us to do it.
Q. Jeremiah was working some, wasn't he, playing music?
A. Yes, he played music.
Q. And he did extra work, or was he working regularly?
A. No, sir. Just when ever they would call the band to

fill in he would get something, but it wouldn't call for a salary he were getting.

Q. How big is the house you live in?

A. The house I live in?

Q. Yes.

A. It is a four room cottage, wouldn't be very large.

Q. You have four rooms, you and your family?

A. That is right.

[fol. 379] Q. Were all of you living there, you and your husband and your five children, in November of 1952?

A. Yes, sir.

Q. All staying there together?

A. Yes, sir, right in the same place.

Q. When you got a call at your work and came home and you asked about Jeremiah and you didn't see him, did the officers tell you they had a warrant for his arrest?

A. No, sir.

Q. Did they tell you they had a warrant sworn out for him?

A. Didn't tell me they had a warrant sworn out for nobody, but they told me they had Jeremiah and he had done all the raping.

Q. They asked for his personal belongings, and searched the house to find them, but didn't tell you they had a warrant?

A. They didn't tell me anything about a warrant. They came back. Sheriff Armstrong was the only one came back, and asked for his belongings, such as he had around there; just some belongings his old grandfather left him, and I gave him those, two cigar boxes.

Q. You said at that time he didn't own a straw hat?

A. He didn't own a hat. I never known him to own a hat, either a straw one, bare headed all the time.

Q. Did the police at that time or later ask you whether or not he owned a straw hat?

A. They have never asked me.

Q. Never asked you if he owned a straw hat?

A. Never asked me concerning a hat.

Cross-examination.

By the Solicitor:

Q. You remember testifying down here in 1952 in this case?

A. I remember.

Q. You testify today that the officers didn't tell you what he was charged with?

A. No, didn't.

Q. But in 1952 you testified he said he did all the rapes; did he tell you what you testified?

[fol. 380] A. Didn't no more tell me that but Sheriff Armstrong.

Q. Sheriff Armstrong is the one who told you he did all the rapes?

A. Sheriff Armstrong told me that standing in my kitchen.

Q. You did know what he was charged with?

A. He told me he did the rapes. That is out of Sheriff Armstrong's mouth.

Q. To refresh your recollection I will read what you said when you testified down here in 1952. You said, "He has two small boxes in the cabinet, and has a hat in the middle room." Do you remember testifying about that?

A. No, I don't.

Q. That is your sworn evidence in 1952?

A. No.

Q. That is exactly what you testified to in 1952?

A. He didn't have a straw hat.

Q. In 1952——

The Court: I must instruct the Solicitor not to argue with the witness although no objection has been made.

By the Solicitor:

Q. You say he is nervous?

A. He was nervous.

Q. Did you ever take him to a doctor to be treated?

A. Never did.

Q. Ever try to put him in an insane asylum?

A. I didn't, no, sir.

Q. You say he made good grades in school?

A. Yes, sir, he made good grades in school as far as his cards said so.

Q. His cards showed he made good grades?

A. I never could get over to school to see his teachers. Just what he would bring home, pretty good.

Lawyer Hall: May I get the page in the record you have there?

The Assistant Solicitor: About the hat?

Lawyer Hall: Yes, sir.

[fol. 381] The Assistant Solicitor: That is on page 138, half way down the page.

Redirect examination.

By Lawyer Hall:

Q. I want to direct your attention to the testimony here. I am going to read from the record what you said in 1952. This is on page 143..

The Solicitor: Is that the same thing I Cross Examined her on?

Lawyer Hall: Same thing. This is subsequent to that time.

The Solicitor: I am objecting to any refreshing this witness' recollection unless it is in relation to what I asked her.

The Court: Overrule the objection. You may proceed.

Lawyer Hall: This is in the same examination, and Mr. McGee is still examining her, but subsequent to the time you are speaking of..

The Court: You have a right to continue.

By Lawyer Hall:

Q. "Q. When you got home were the police at your house that Monday? A. They had been there I was told afterwards, and came back by the time I got there. Q. They got all his belongings? A. They got all his belongings, and carried off several shirts, some papers and some pants. Q. Has he got a blue or black shirt with a yellow-gold designs on it? A. Never been in my house. Q. Does he wear a straw hat? A. Never. Q. Does he have any kind of a hat? A. Bare headed. He ain't got a hat he owns in my house."

Lawyer Hall: That is the last testimony on that subject.
The Court: Do you want to ask her anything about it?
Lawyer Hall: Yes, sir.

By Lawyer Hall:

Q. Which one of these answers is correct, there was a hat in the middle room, or he didn't own a hat.
A. He didn't own a hat.
Q. Have you ever in your life seen him wear a straw hat?
[fols. 382-386] A. He doesn't wear a straw hat.
Q. And he never wore a hat of any kind?
A. Any kind, and he is all the time bare headed.
Q. Don't own a hat?
A. Don't own a hat.

[fol. 387] CHARLIE WILLIAMS, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you tell the Court your name?
A. Charlie Williams.
Q. Where do you live?
A. Number 1 Gravel Pit Lane, Upper Wetumpka Road.
Q. Is that near the home of Jerry Reeves and Carnella Reeves?
A. Yes, sir.
Q. How close to them?
A. They live two doors below me.
Q. Were you living in Gravel Pit Lane in 1952?
[fol. 388] A. Yes, sir.
Q. How long had you been living there at that time?
A. About eight or nine years, as near as I can get at it. I have been there since 1943.
Q. 1943?
A. Yes, sir.
Q. How long have the Reeves been living there?
A. They have been living there about four years.
Q. About four years?
A. Yes, sir.

Q. From this date or four years from the date in 1952?
A. From the date of the accident:
Q. In 1952 they had lived there about four years?
A. Well, it was four years until the afternoon this accident happened.
Q. What do you do for a living?
A. I works at the Y.M.C.A.
Q. You work at the Y.M.C.A. in Montgomery?
A. Yes, sir.
Q. How long have you been working there?
A. About ten years.
Q. Do you know Jeremiah Reeves, Junior, the defendant in this cause?
A. Yes, sir.
Q. How long have you known him?
A. Been knowing him now about six years now.
Q. About six years?
A. About six years from the time he has been living there.
Q. Did you haye occasion to see him frequently during that time?
A. Sir?
Q. Have you seen him frequently during that ten year period, often?
A. Yes, sir, I seen him.
Q. Have you seen him every day or at least every day during that period of time?
A. Yes. I see him almost every evening.
Q. Almost every evening?
[fol. 389] A. Yes, sir.
Q. Do you know what his general reputation is in that community?
A. Well, he usually beat the drums for John Golson.
Q. His general reputation?
A. He has a nice reputation to my knowing.
Q. A nice reputation?
A. Yes, sir.
Q. Did he behave in way peculiar that you saw?
A. Anyway peculiar?
Q. Yes, sir.
A. Not to my knowing.
Q. Not that you know of?

A. No, sir.

Q. Did you know Jeremiah on July 28, 1952?

A. July, yes, I knowed him.

Q. Do you know whether or not you saw him on that day?

A. No, sir, I wouldn't be positive I saw him that day.

Q. You couldn't be sure at all?

A. No, sir.

Q. Did you testify in the previous hearing concerning Jeremiah Reeves?

A. Once before.

Q. Once before?

A. Yes, sir.

Q. Do you recall where that was?

A. I cannot recall what year it was, it has been so long.

Q. Were you asked at that hearing whether or not you had seen him on that day?

A. I disremember.

Q. You don't know whether you were asked that, or not?

A. No, sir.

Q. How do you work at the Y.M.C.A., work days or nights?

A. I works five days a week, and I works on Sunday nights.

Q. Five days a week?

A. Yes, sir.

Q. Do you work in the day time or night?

[fol. 390] A. I work on Monday, Tuesday—I mean Tuesday, Wednesday, Thursday and Friday and Saturday until 12 o'clock, and then I takes off Sunday and I goes to work Sunday night and gets off at 8:30 Monday morning.

Q. You work Tuesday, Wednesday, Thursday, Friday—and Saturday until 12 o'clock and get off from work at 8 o'clock on Monday morning?

A. Yes, sir. I goes to work on Sunday night.

Q. What did you do early on Monday?

The Assistant Solicitor: We object to that unless it is confined to 1952 in the month of July.

The Court: Sustained the objection unless we have it a little more definite.

By Lawyer Hall:

Q. Were you working that way in July of 1952?
A. No, sir.
Q. How were you working in July?
A. I was working a full week, and I was getting off Saturday at 12 o'clock.
Q. You were working a full week?
A. Yes, sir.
Q. Worked on Monday, Tuesday?
A. Yes, sir.
Q. Like any other?
A. Yes, sir.
Q. What time did you go to work?
A. Go to work at 7:30.
Q. And didn't get off until what time?
A. Until 6:30.

(No Cross-Examination.)

[fol. 391] JOHN HARRIS, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name to the Court and Jury.
A. John Harris.
Q. Where do you live?
A. 106 North Hall Street.
Q. What is your occupation?
A. Ice salesman.
Q. Were you living at that address in Montgomery on July 28, 1952?
A. Was I living there?
Q. Yes.
A. Yes, sir.
Q. At that same address?
A. Yes, sir.
Q. Do you know the defendant, Jeremiah Reeves, Junior?

A. Yes, sir.

Q. How long have you known him?

A. Between seventeen and eighteen years.

Q. How did you know him?

A. He was raised right across the street in front of me, ployed in my yard with my children.

Q. He lived right across the street from you?

A. Yes, sir.

Q. How long?

A. Well, about fifteen or sixteen years, as far as I know. He wasn't across the street, right around the corner, right in the neighborhood.

Q. When he moved from right across the street from you did he move to his present address, or to his parents' present address in Gravel Pit Lane?

A. Yes, sir.

Q. How close is your house to the Reeves house now in Gravel Pit Lane?

A. About a mile and a quarter.

[fol. 392] Q. About a miles and a quarter?

A. As far as I get at it.

Q. What did you mean just a moment ago when you said around the street?

A. I mean that he was raised on Early and moved from Early Street on Hall Street right across from me, about as far from me to that wall back there. (Indicating)

Q. How long did he live at that home?

A. Five or six years to my knowing.

Q. Do you remember when he moved from there?

A. No, sir, not exactly. I cannot tell you exactly what date, but they moved from there down to Gravel Pit Lane.

Q. How many children do you have?

A. About ten.

Q. About ten children?

A. Yes, sir

Q. Are some around the age of Jeremiah?

A. Yes, sir.

Q. You say you have known him all of his life?

A. That is right.

Q. You know his parents?

A. Yes, sir.

Q. Do you go to the same church he goes to?

A. Yes, sir.

Q. Do you know whether or not he is a member of that church?

A. Yes, sir.

Q. Can you tell us what church?

A. Shiloh Baptist.

Q. Shiloh Baptist Church?

A. Yes, sir.

Q. Did he attend that church fairly regularly?

A. Yes, sir.

Q. Are you acquainted with his general reputation in the community? And in the community in which he lives?

A. He worked on the ice wagon with me from the time [fol. 393] he was able to tote one hundred pounds of ice.

Q. Do you know his general reputation in the community?

A. It is all right in the neighborhood.

Q. He does have a good reputation in the neighborhood?

A. Yes, sir.

Q. Now, does he have any little oddities or peculiarities about him which caused you to think he was different from anyone else?

A. Well, sometimes I let him work it——

The Assistant Solicitor: I object. This hasn't anything to do with counsel's question.

The Court: Overrule your objection.

By Lawyer Hall:

Q. When you say you let him work it, what do you mean by that?

A. Sometimes I would let him deliver the ice when I would run over home.

Q. From your association with him did you have any reason to feel that Jeremiah was different from other boys to a certain extent?

A. Do you mean something about being crazy or something?

Q. Possibly.

A. Well, not exactly crazy but sometimes, you know, little things would come up.

Cross-examination.

By the Assistant Solicitor:

Q. How long did Jeremiah work for you on the ice wagon?

A. Five years. Started when he could only handly a nickel piece of ice, and when he left he could carry one hundred.

Q. Was his work satisfactory?

A. Sure, it was. He worked good enough for me. I used to give him the money and send him on the route and tell him to go ahead and I would catch him.

Q. You didn't think he was so crazy and insane you couldn't trust him with the money and the ice, did you?

A. Sure, I didn't. When I hired him I trusted him.

Q. How old did you say he was?

A. About ten.

[fol. 394] Q. You knew him all his life?

A. Just about.

Q. You knew him when he was a little boy three years old?

A. No, sir.

Q. Didn't know him that age?

A. I didn't know him when he was three years old.

Q. About how old was he when you first knew him?

A. About four or five.

James Dolman, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. What is your name, please?

A. James Dolman.

Q. Where do you live?

A. 40 Prospect Alley.

Q. How long have you lived there?

A. Ever since 1936.

Q. Did you ever live at 108 Prospect Alley?

A. There ain't no such number.

Q. You said there is no such number as 168 Prospect Alley?

A. That is right.

By the Court:

Q. Why were you late getting here today?

A. I had to go to the doctor for my eyes. I was hurt on the job.

By Lawyer Hall.

Q. Where do you work?

A. Gamble Brothers. Used to work in Southern Cotton Oil Company.

Q. Are you a native of Montgomery.

A. I am.

Q. Born here?

A. I was born in Jefferson County?

Q. How long have you been here in Montgomery?

A. Ever since 1936.

[fol. 395] Q. Lived here continuously?

A. Ever since 1936.

Q. Do you know this defendant here, Jeremiah Reeves, Junior?

A. I do.

Q. How long have you know him?

A. Ever since 1936.

Q. Do you know his parents, his father?

A. I do.

Q. Are you any kin to him?

A. No, sir.

Q. Are you acquainted with his reputation, his general reputation in the community where he lives?

A. Around the community where I live today. He moved from where I live at.

Q. When I speak of community I mean all of Montgomery, the City of Montgomery around.

A. Yes, sir.

Q. Are you acquainted with his general reputation in this community?

A. Yes, sir.

Q. In the city here?

A. Yes, sir.

Q. Is that reputation good or bad?

A. It is good.

Q. Are you acquainted with his general reputation for truth and verasity in this particular community?

The Solicitor: I object.

The Court: Generally speaking, truth and verasity isn't any issue in this case. Until it is raised the Court sustains the objection.

Lawyer Hall: It is not. We will withdraw the question.

By Lawyer Hall:

Q. Do you recall when Jeremiah was first tried in 1952 for this alleged rape?

A. I do.

Q. Did you testify in that trial?

[fol. 396] A. I did.

Q. Did you at that time state that your lived at 108 Prospect Alley?

A. I didn't state that. I said I was living at 1-A Prospect Alley instead of 108.

Q. So that 108 Prospect Alley would be wrong?

A. Yes, sir, that is wrong.

Q. You recall testifying in that case when the defendant was tried at that time; do you recall that?

A. Yes, sir.

Q. Did he have a mustache at that time?

A. I don't remember.

Q. You don't remember whether he did or didn't?

A. No.

Q. Do you recall the day, Monday, July the 28th, 1952; have you any recollection of that day at all?

A. I don't remember for sure that date, or not.

Q. You haven't any clear recollection of it in your mind at all or the events that transpired; is that right?

A. No, sir.

(No Cross-Examination.)

WILLIE THOMAS, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please?
A. Willie Thomas.
Q. Where do you live?
A. LeGrand, Alabama.
Q. Where is that?
A. Down the Norman Bridge Road.
Q. Is that in the City of Montgomery?
A. That is right.
Q. Or Montgomery County?
A. Montgomery County.
[fol. 397] Q. How far is it out of the city?
A. About nineteen miles, I think.
Q. About nineteen miles out of the city?
A. Yes, sir.
Q. Do you know Jeremiah Reeves, the defendant here?
A. Sure do.
Q. How long have you known him?
A. Well, I know him about six years before he got into his trouble.
Q. Did you testify in the case of the State of Alabama against Jeremiah Reeves in 1952?
A. Tell me that over again.
Q. Were you a witness in the case against Jeremiah Reeves in 1952?
A. Yes, sir.
Q. You saw the defendant then during the course of the trial, you saw him then, didn't you?
A. Yes, sir.
Q. Do you remember whether or not he had a mustache then?
A. No, he didn't have a mustache then, he sure didn't.
Q. You don't know whether he had one then, or not, do you?
A. No, sir. I didn't pay any attention.
Q. Are you acquainted with his general reputation in this community?

A. Well, he is a very nice fellow as far as I could see.

Q. Is that his general reputation?

A. Well, I reckon so.

Q. Have you ever known him to be in any serious trouble before?

A. Not before, I sure haven't, not before.

Q. Do you know what the people say about him in this community, people generally?

A. Do I know what they said?

Q. Yes.

A. No, I don't. I never have heard nobody say nothing about it except that he was all right.

Q. Never heard anybody say anything good or bad about him?

A. No.

Q. Either one?

A. I sure haven't.

[fol. 398] Q. You, yourself, know nothing bad about him?

A. I sure don't.

(No Cross-Examination.)

Alberta Poland, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name.

A. Alberta Pollard.

Q. Where do you live?

A. Where I live at?

Q. Yes.

A. I live in Prospect Alley, down there by Crampton Bowl.

Q. What number?

A. Number 48.

Q. Number 48 Prospect Alley?

A. Yes, sir.

Q. Is that Prospect Alley or Avenue?

A. Prospect Alley.

Q. Did you ever live at Number 16 Prospect Alley?
A. It used to be 16, but they changed numbers.
Q. Was that 16 Prospect Avenue or Prospect Alley.
A. Prospect Alley.
Q. So 16 Prospect Avenue would be wrong, would it not?
A. Yes, sir.
Q. How long have you lived here in Montgomery?
A. Me?
A. Yes.
A. I have been here all my days; I was raised here.
Q. How long have you lived in Prospect Alley?
A. Thirty-five years.
Q. Do you work?
A. Capitol City Laundry.
Q. How long have you worked there?
[fol. 399] A. Thirty six years.
Q. Do you know Jeremiah Reeves, Junior, the defendant here?
A. I sure do.
Q. How long have known him?
A. Been knowing him ever since he came in the world.
Q. Knew him when he was born?
A. I sure did.
Q. Did you name him when he was born?
A. I sure did, named him Jeremiah Reeves.
Q. You gave him his name?
A. Yes, sir.
Q. Were you then unmarried?
A. No, sir, I was married.
Q. You have had an opportunity to observe him and got to know him pretty well since he was born?
A. Yes, sir, since born.
Q. Do you know where he lived at the time or before he was arrested?
A. Lived down in the gravel pit somewheres, down back here in the gravel pit.
Q. Do you know where that was?
A. I know where the gravel pit is. He didn't want to stay down there at the gravel pit.
Q. Are you pretty well acquainted with that community, know anything about it at all?
A. No, sir, I don't know anything about it at all.

Q. Did you visit Jeremiah out there, or Jeremiah came to visit you on Prospect Alley?

A. I never stopped around there where I could see him there. When he came by from work I would see him then I would see him walking down there to home. Never would stop unless I stopped him at the porch.

Q. Tell me when he moved were you to see him there?

A. I didn't see him over there after he moved because I had to work. I saw him coming from where he had moved, down there by the gravel pit.

Q. How many years before he got in this trouble? [fol. 400]. A. Oh, it has been a good while.

Q. Be two or three years?

A. Yes, sir.

Q. Something like that?

A. Yes, sir.

Q. Did you see him on Sunday at church?

A. I seen him on Sunday at church.

Q. All went to the same church?

A. Yes, sir, we belonged to the same church.

Q. What church?

A. Shiloh Baptist Church, Pelham Street.

Q. Is Jeremiah a member of that church?

A. Yes, sir.

Q. He attended church regularly?

A. Sure did; and sang in the choir.

Q. He sang in the choir at that church?

A. Sure did.

Q. And attended church regularly?

A. Attended church regularly, sure did.

Q. Who is the pastor of Shiloh Baptist Church?

A. Reverend Aaron Hoffman.

Q. You stated Jeremiah used to live in Prospect Alley is that right?

A. Sure did, yes, sir.

Q. Do you recall when he left Prospect Avenue?

A. Yes, sir. He was a great big boy in Prospect Alley.

Q. He lived there most of his life?

A. Most of his life lived there in Prospect Alley.

Q. You know everybody in that neighborhood?

A. Yes, sir.

Q. You have lived there about thirty-five years, you say.

A. Sure did.

Q. Know most of the people around Prospect Alley?

A. Sure do.

Q. Do most of the people around Prospect Alley know Jeremiah?

A. Sure do.

[fol. 401] Q. Most of them belong to the Shiloh Church around there?

A. Biggest ones go to the Shiloh Church around there.

Q. Do you know Jeremiah's general reputation in the community?

A. All I can say about him is good. When he was staying on Prospect he was all right. When he stayed there on Prospect Alley he was all right. When he left there I couldn't say because I didn't see him.

Q. Let us put it this way. Up until the time Jeremiah got into trouble in this cause did you know his general reputation in the community in which you lived and was acquainted?

A. Yes, sir, I know. I know he was all right as long as he was there.

Q. When you say all right, you mean you never heard any bad things about him?

A. No, sir, nothing bad about him.

Q. Did you hear anything good about him?

A. I had always heard people say he was a nice boy. If he wasn't I would never tell it.

Q. You just don't know anything bad about him?

A. No, sir.

Q. So to his general reputation, will you say it was good?

A. I would say it was good.

Q. You testified, I believe, you stated a moment ago, you did testify in the previous hearing in this cause, didn't you?

A. Yes, sir.

Q. You were a witness in that cause?

A. Yes, sir.

Q. Do you remember whether or not Jeremiah Reeves had a mustache during that hearing?

A. I don't know that.

Q. You don't remember whether he had one, or not; is that right?

A. No, sir.

(No Cross-Examination.)

[fol. 402] Lou Ellen Thomas, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Tell the Court your name, please.
A. My name, Lou Ellen Thomas.
Q. Where do you live?
A. Place called LeGrand, Alabama.
Q. Here in Montgomery County?
A. Yes, sir.
Q. Were you raised in Montgomery County, Alabama?
A. Yes, sir.
Q. Do you know Jeremiah Reeves, Junior?
A. Yes, sir.
Q. This defendant?
A. Yes, sir.
Q. How long have you know him?
A. About six years.
Q. Do you mean about six years from this time?
A. Yes, sir.
Q. Or the time he was previously tried?
A. From the time back there he was previously tried.
Q. Will you say you have known him for the past eight or nine years at this time?
A. Eight or nine years to this time.
Q. Did Jeremiah ever visit with you in LeGrand?
A. Yes, he did.
Q. How often did he come down there?
A. Very seldom because my daughter lived up here and went to school up here, and naturally I visited awhile and stayed a few days or a week at a time.
Q. When you came up here did you visit Jeremiah and Jeremiah's family?
A. I visited them in their home while my daughter was living with them going to school.

Q. Did you do that frequently?

[fol. 403] A. Sir?

Q. Do that several times?

A. Not after she was through in school.

Q. I mean during the course of the school year?

A. Quite frequently.

Q. How many times would you visit your daughter?

A. Oh, I was here every two weeks, so I went there every two weeks.

Q. So you went there every two weeks?

A. Oh, I would go there every two weeks.

Q. When you went to see her how long would you stay?

A. I wouldn't spend the night over there, just spend awhile over there.

Q. Did you know Jeremiah Reeves before your daughter started coming up here to school?

A. I seen him with his grandfather around churches in my neighborhood.

Q. You know his grandfather?

A. Yes, sir, I did.

Q. How did you know his grandfather?

A. Lived next doors in the neighborhood.

Q. How often have you seen Jeremiah with his grandfather?

A. It is quite often when he was a little boy, when Jeremiah was a small, little boy he would carry him to church with him just like a small boy of his.

Q. Does his grandfather live in the neighborhood?

A. No, sir, he is dead now. But when he was a child his grandfather was door neighbors to me.

Q. Was that in LeGrand?

A. Yes, sir. His grandfather was door neighbors to my father.

Q. So your father and Jeremiah's grandfather were next door neighbors?

A. Yes, sir.

Q. Up until what time?

A. As near as I get at it, about 1912, I guess. His grandfather and my father lived close together as neighbors until about the last of 1912.

Q. And after that you saw his grand daddy quite a little bit?

A. Yes, sir.

[fol. 404] Q. Every once in awhile?

A. Went to church down there with his own grandchildren.

Q. You all attended church, his grand daddy came to church?

A. In the community down there around Elmore and LeGrand—had his little grand baby with him.

Q. His grand daddy went to church down there?

A. Yes, sir, and brought his little grand boy with him.

Q. How long has it been since your daughter stayed with the Reeves?

A. In 1946 as near as I come at it.

Q. And have you visited with them since that time?

A. No, I haven't.

Q. Has he been down to see you since that time?

A. I have seen him at the churches as a rule.

Q. You have seen him at the churches?

A. As a rule with his mother and father. The last time I seen him at all he was at the church with his mother and father.

Q. When did you see him at church with his mother and father?

A. In September before, you know.

Q. Before you came to Court?

A. Before I came to Court.

Q. You saw him in September, 1952?

A. Yes, sir.

Q. You saw him——

A. With his mother and father at the church.

Q. Do you know his general reputation in the community in which you live?

A. Sir?

Q. Do you know his general reputation in the community you live?

A. In my community?

Q. Yes.

A. It is very good. When he was down there with me he didn't do anything, you know. Once in awhile he got rough sometimes with my children. I make him mind.

Q. I will ask you if your know his reputation in your community?

A. Where I live?

[fol. 405] Yes.

A. Yes, sir, because he visited us, only visiting there.

Q. Only visiting?

A. Yes.

Q. Do you know his reputation in that part of Montgomery County?

A. Sir?

Q. His reputation in Montgomery County? You have a wide acquaintance in Montgomery, don't you?

A. Well, quite a few of them.

Q. Do you know a lot of people around the churches?

A. Yes, sir.

Q. You attend the various activities and know Jeremiah, don't you?

A. Yes, sir.

Q. Do you know what reputation he has in this community in which you live?

A. Do you mean of Jeremiah?

Q. Yes, Jeremiah.

A. Yes.

Q. is it good or bad?

A. It is good since he was a child. Sure, it is good in my community.

Q. The last time you saw Jeremiah did he have a mustache?

A. The last time——

The Assistant Solicitor: I object to that until we find out what time he is talking about.

Lawyer Hall: She testified she saw him last at the hearing here.

The Court: I think we will see what she says. Objection overruled.

By Lawyer Hall:

Q. The last time you saw Jeremiah did he have a mustache?

A. Have a mustache?

Q. Yes.

A. A little few here. (Indicating)

Q. At the time you saw him previously in September, I believe you said, with his mother and father in church?

[fol. 406] A. Yes.

Q. Do you remember whether he had a mustache?

A. A little few, not long, not dark, because you have some children that are really darker than his complexion. He didn't have very dark complexion when he was a very small kid, you could see it.

Q. Do you mean he has always had some mustache since he was a little kid?

A. Yes, sir, he was always dark around his lip and it was up his face.

Q. Always?

A. Always.

Q. You observed him in your home and his home?

A. Yes, sir.

Q. Over the years?

A. Yes, sir.

Q. How long would you say he has had that darkness around his lip?

A. As a small kid. I told you I knowed him from 1946. He had it then.

Q. He had it then?

A. Yes, sir.

Q. When he came to your house, do you mean, has he always had it?

A. A little dark complexion around his mouth, darker than his face was.

Q. Would you say he had the same type mustache as he has now?

A. Heavier today.

Q. Wasn't as heavy?

A. No, sir.

Q. But generally the same type?

A. Yes, sir.

Q. Is that what you tell us?

A. That is right.

Q. Have you ever known Jeremiah to wear a straw hat?

A. No, sir, I never remember him wearing nothing on his head.

Q. Have you seen him wear a hat at all on his head?

A. No, sir, no cap neither.

[fol. 407] Cross-examination.

By the Assistant Solicitor:

Q. You say you saw Jeremiah at church in September before he was tried in November?

A. Yes, sir. The fourth Sunday in September, down the road below Snowdoun on the Ramer Road.

Q. Do I understand you to tell the Court he had sort of a dark line around his mouth then?

A. Yes, sir. I seen him from 1946; when I seen him it was darker than his skin was.

Q. Did you see him in church the fourth Sunday of 1946, or the fourth Sunday of 1952?

A. He was tried here, he was tried here in 1952?

Q. That is right.

A. I seen him in September, 1952, fourth Sunday in September.

Q. Did he have a large mustache like he has now?

A. Every bit as much.

Q. Look at him now.

A. I wouldn't say that because, you know, he is older than he was then. I said he was dark around his mouth just like he is now.

Q. Did he, or not, have a mustache?

A. Sir?

Q. Just have dark skin, or have a mustache?

A. His skin was clearer than his mouth up around here. (Indicating)

Q. Are you trying to tell us he was just starting to grow a mustache in September?

A. I wouldn't say started, but from the time I got acquainted with him he was a little darker around his mouth than he was his flesh.

Q. That is in 1946?

A. Yes, sir.

Q. Wasn't it about the same on the fourth Sunday in September?

A. I didn't pay that much attention to him.

Q. You don't know then what he looked like on the [fol. 408] fourth Sunday in—before the trial?

A. I just don't know.

Redirect examination.

By Lawyer Hall:

Q. You don't mean you don't know what he looked like?
A. Couldn't say about his mustache.
Q. You didn't count the hairs his mouth?
A. Sir?
Q. You don't know whether it was a heavy mustache, or not, you know he had a mustache?
A. No, sir, but he had a mustache.
Q. You didn't pay any particular attention to it?
A. No, sir.
Q. You know he had a mustache in 1946?
A. I guess, yes, sir.
Q. You don't guess, do you, you know?
A. Yes, sir.
Q. You know he had some hair?
A. Know he had some hair.

Jerry Reeves, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please?
A. Jeremiah Reeves, Senior.
Q. Where do you live?
A. 35 Gravel Pit Lane.
Q. Your work?
A. Pop Myers, L. C. Myers—drive delivery truck.
Q. Do you know the defendant, Jeremiah Reeves, Junior, over here?
A. That is my son.
Q. How old is he now?
A. Nineteen.
Q. He is nineteen now?
[fol. 409] A. Yes, sir.
Q. Do you recall when he was first arrested for this alleged offense for which he is being tried now; do you remember wher he was first arrested in this cause?

A. I sure do.

Q. What year was it, do you know?

A. 1932. 1952, I mean.

Q. 1952?

A. 1952.

Q. Do you remember what month?

A. November the 10th.

Q. Do you remember what day it was?

A. Monday, one o'clock.

Q. One o'clock?

A. One o'clock

Q. Were you at home that time?

A. No. I was working, driving truck.

Q. When did you first learn about it?

A. When I got home.

Q. What time did you get home?

A. About four o'clock.

Q. What did you learn when you got home?

A. People called me in gravel pit they came out there and got him.

Q. The police came in the house and got him?

A. They had done already got him. Didn't get him at home.

Q. Do you know where they arrested him?

A. Said they got him on Monroe Street.

Q. The police got him? Had the police been to your home when you got there?

A. They had been out there.

Q. When you say they had been out there what do you mean?

A. Been to my home. I didn't see them. They all told me.

Q. Who told you they had been out there?

A. My mother.

Q. Was your mother at the home then?

[fol. 410] A. Sure, she is out there.

Q. She said the police had been out there for what purpose?

A. What is that?

Q. For what purpose?

A. Said they came out to pick up Junior. She didn't say why.

Q. Came to pick up Junior?

A. They wanted him. She didn't know why.

Q. When she said Junior she had reference to Jeremiah Reeves, Jr?

A. Yes, sir.

Q. Did you get in touch with the police that day?

A. They was two, and more of them came, five of them.

Q. Did you see them in your home?

A. Sure did.

Q. Do you know which of them arrested your son?

A. Sure do.

Q. Tell me which.

A. Mr. Armstrong and Mr. Talley, came out there, came in the house.

Q. Armstrong and who?

A. Mr. Talley.

Q. Who are they?

A. Deputy Sheriffs. Wilson Armstrong and Mr. Talley.

Q. Are they the police officers who arrested him?

A. That is what they say, said they arrested him.

Q. Did you ask them why they arrested him?

A. I asked them why they arrested him, and they came in and looked for his cigar boxes this boy had and they took them. They asked for Junior's boxes and when I find them I asked them what they arrested him for. They said raping a lady. I said, "You never arrested anybody who done the raping. Why don't you arrest him? You didn't do anything with him." He said, "We want to get them all." I said, told him, "He wasn't the one that done it."

Q. Did you ask him when you could see him?

A. I asked could I see him.

Q. What did he say?

A. Told me no. And we started to camp Kilby then.

[fol. 411] Q. How did you know he was at Kilby?

A. They said they carried him out there.

Q. Didn't bring him to the County Jail?

A. I don't know where they carried him. He was at Camp Kilby. I went out there.

Q. Did you see him?

A. In the office when I went out there.

Q. What is Camp Kilby?

A. State prison.

Q. That is the State prison?

A. Yes, sir.

Q. That is not the County Jail of Montgomery County?

A. State prison out on the Upper Wetumpka Road—the Wetumpka Highway about four and one half miles from Montgomery.

Q. About four and one half miles from the City of Montgomery?

A. That is right.

Q. That is not the same place as the County Jail?

A. County Jail across the street; Camp Kilby out there.

Q. You say Camp Kilby is the State prison?

A. Camp Kilby is the State prison.

Q. It is the State penitentiary?

A. State penitentiary.

Q. At what time did these officers tell you they had taken Jeremiah out there?

A. They didn't say.

Q. What time were you talking to them?

A. Around about five o'clock.

Q. Around about five o'clock on that afternoon, on Monday?

A. Monday.

Q. I believe you said November 10th?

A. November 10th, 1952.

Q. When did you go out there?

A. I went out to Camp Kilby Monday.

Q. You were not allowed to see him that day?

A. Not that day.

[fol. 412] Q. Were you allowed to see him the next day?

A. I went out that Monday and asked Mr. Dees could I see him. He said, "Wouldn't be customary, I need had time enough to make him talk." and I left.

Q. Who is Mr. Dees?

A. He is Deputy Warden out there.

Q. He wouldn't allow you to see him that day?

A. No, sir.

Q. Would he allow you to see him Tuesday?

A. They wouldn't allow me to see him Tuesday.

Q. Allow you to see him on Wednesday?

A. Didn't allow me to see him Wednesday.

Q. Let you see him Thursday?
A. Didn't.
Q. You didn't see him Thursday?
A. No, sir.
Q. When did you see him?
A. Friday, 4 o'clock.
Q. Friday?
A. Yes, sir.
Q. You are positive about that?
A. Positive Friday when I saw him.
Q. He was kept at the State prison all that time?
A. That is right, since Monday.
Q. Did Jeremiah have a mustache?
A. He has, sir.
Q. On November 10th, 1952?
A. Sure, he did.
Q. How long had he been wearing a mustache at that time?
A. Since he was fourteen.
Q. Ever since he was fourteen?
A. Yes, sir.
Q. How old was he on November 10th, 1952?
A. Seventeen.
Q. He had been wearing a mustache three years at that period of time?
[fol. 413] A. Yes, sir.
Q. Was it discernable, could you tell he had a mustache?
A. You could tell it. And when he was trying to cut it he cut himself on the lip. I said, "What you doing?" He says, "I am cutting my mustache." I says, "What you doing?" "Cutting my mustache, daddy," he told me. I says, "You ought to let that mustache alone, you ain't old enough to shave yet." But he kept it up.
Q. Did Jeremiah own any hats or wear a hat?
A. No, sir, he didn't own any hats; didn t like to wear hats.
Q. Did you ever know him to wear a straw hat?
A. He didn't have any.
Q. Ever see him have a straw hat?
A. He never had one I know of.
Q. Did he usually go about bare headed?
A. Go without a hat.

Q. Did you ever see him wearing—did Jeremiah own a blue shirt, sport shirt, with yellow print figures on it at that time?

A. Didn't have none.

Q. Did the police take any of his clothing when they came out to the house, did they get some of his clothes?

A. Yes, they got some boots and wash pants.

Q. And what else?

A. Some trousers, belongs to his brother.

Q. Did they go through his clothing?

A. Went through the house, tore all the house up, uprooted everything, and cut the telephone wires.

Q. The police cut the telephone wires?

A. They did. And we had to call the telephone company to come out and fix the wires. The police cut them to keep from calling there.

Q. Did they find a blue sport shirt with yellow designs on it?

A. Didn't find any because he didn't have any.

Q. Did they find a straw hat there?

A. Might have found one of my straw hats there. He didn't have any. I am sure they could find it.

Q. Did you have a blue sport shirt with yellow figures on it?

[fol. 414] A. No more than the shirt I have on right here. I bought it around two weeks ago, the onliest one I have. It came from in Montgomery. I think it had come from Alex Rice's.

Q. What church do you belong to?

A. Shiloh Baptist Church.

Q. How long have you belonged to that church?

A. Since 1933, that church.

Q. Jeremiah Reeves, Junior go to that church too?

A. Yes, sir. He joined church when six years old.

Q. Has he attended church regularly?

A. Every Sunday, and sang in the choir.

Q. You say he sang in the choir?

A. Sang in the Junior Choir.

Q. Was he otherwise active in church?

A. Yes, sir. He came to church and Sunday School.

Q. Do you know Mr. Armstrong and other officer whose names you mentioned?

A. Yes, sir, know him.

Q. How long have you known the deputies whose names you gave me?

A. Armstrong has been knowing me, I guess, for about twenty years.

Q. Do they live in the vicinity where you live?

A. Armstrong lives on Willena. That is where he lived before his wife died. I don't know if he lives there now. And Talley lives at 1307 Bell Street.

Q. Do they know your family?

A. Yes, sir, they know me.

Q. Do they know your children?

A. Yes, sir, know all of them.

Q. Do they know Jeremiah?

A. Yes, sir, they do know him.

Q. Where was Jeremiah on July 28th, 1952? Do you remember that day?

A. I don't know. I don't know what happened that day.

Q. That is the day Mrs. Crowder allegedly was attacked and raped. Have you any recollection of that day?

A. I sure don't, not that day.

[fol. 415] Cross-examination.

By the Assistant Solicitor:

Q. How long have you known Wilson Armstrong, Deputy Sheriff?

A. Been knowing Mr. Armstrong a long time. He has been Deputy Sheriff eight, nine, ten years.

Q. Has Mr. Armstrong ever mistreated you in any way?

A. He never done anything to me.

Q. Ever cuss at you, treat you mean?

A. No, sir, he didn't cuss me.

Q. Does Mr. Armstrong have the reputation among the negro people in this county as being most interested in them, helping them out when things go wrong, and doing what he can for them in any way?

A. I don't know that.

Q. Mr. Armstrong has a pretty good reputation of being a jolly, well-liked fellow by everybody, hasn't he?

A. I don't understand that.

Q. Mr. Armstrong has a reputation of being pretty jolly and well-liked by everybody?

A. I don't know about everybody.

Q. He raids a lot of stills?

A. He sure does. He gives liquor folks a battle.

Q. He isn't mean to them when he does that?

A. That is what I mean; he sure isn't, I reckon.

Q. Ever been mean to you?

A. No, sir. I never gave him any trouble to be mean to me.

Q. Was he that day when he talked to you about your boy?

A. He wasn't.

Q. The day of the arrest?

A. He wasn't.

Q. He wasn't?

A. No, sir.

Q. When you testified before you were asked: "Who did you talk to when you got home?" And your answer was: "Mr. Armstrong."

Lawyer Hall: I believe the record will indicate he said that officer wasn't there when he got home and he came in later.

[fol. 416] The Witness: That is what I said this time, and I said it two years ago and five months and fifteen days ago. I said the same thing. He wasn't there. I said that two years, five months and fifteen days ago.

By the Assistant Solicitor:

Q. Did he come out to your home there?

A. Yes, sir.

Q. What time did he get there?

A. Around five o'clock. That is my idea. It was around five o'clock, five to five-thirty.

Q. Did Mr. Armstrong tell you where your boy was then?

A. I asked him. He said Camp Kilby.

Q. Did he also tell you he would let you know when you could see your boy, go out to see him?

A. He might have told her, he didn't tell me.

Q. What?

A. He might have told her.

Q. When you testified before didn't you tell the Court he would let you know when he got some instructions?

A. Probably she said. I didn't.

Q. I am reading from your testimony on page 155. Didn't you tell the Court that?

A. I didn't tell the Court that. I went out there on Monday, Tuesday, Wednesday, Thursday and didn't see him. Went back Friday and they let me see him.

Q. The Monday afternoon he was arrested?

A. She gets home around four o'clock.

Q. Did you go out to Kilby on Tuesday and on Wednesday?

A. Went out there Monday, Tuesday and Wednesday and Thursday, and went back Friday and they let me see him.

Q. You testified last time—you didn't say anything about going out that day and the following day—you said about three days later on Thursday.

A. What is three days later?

Q. I don't know. I am asking you.

[fol. 417] A. What day was it?

Q. He was arrested Monday. Your testimony shows you went out three days afterwards, on Thursday.

A. I said, Monday, Tuesday, Wednesday, Thursday.

Q. Now you tell the Court on Friday?

A. Went back Friday and got a chance to see him.

Q. Will you let me ask you a question?

A. I went out three days and didn't see him.

Q. You tell us now you saw him on Friday?

A. I said Friday afternoon I seen him, in the afternoon.

Redirect examination.

By Lawyer Hall:

Q. Is your house located within the city limits of Montgomery?

A. It is down by gravel pit.

Q. And there is a Police Department in this city, Police Department?

A. That is right.

Q. And the officers who went to your home were the County Deputy Sheriffs?

A. They was Deputy Sheriffs.

Recross-examination.

By the Assistant Solicitor:

Q. Do you know who made the arrest of your boy?
A. I don't know who made the arrest except Mr. Wilson Armstrong and Mr. Talley.
Q. They are Deputy Sheriffs?
A. They told me.
Q. You know that they are Deputy Sheriffs?
A. That is what they told me.

VIOLA FELDER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please, what is your name, please?
A. Viola Felder is my name.
[Vol. 418] Q. Where do you live?
A. Out Wetumpka Highway.
Q. How long have you lived there?
A. About twelve years.
Q. Do you know this defendant, Jeremiah Reeves, Junior?
A. Yes, sir, sure do.
Q. How long have you known him?
A. I have been knowing him, I reckon, maybe about five or six years.
Q. Five or six years?
A. That is right.
Q. How old would you say he was when you first knew him?
A. I couldn't say that because I wouldn't know.
Q. You have no idea?
A. I guess I sure don't.
Q. But five or six years?
A. When he first was living out there he wasn't no size.
Q. You have known him ever since they have lived where they live now?
A. Yes, sir.

Q. Were you living anywhere near his place here on Gravel Pit Lane?

A. That is right.

Q. How close did you live to him where his parents live?

A. Well, I would say just about half a block. She lived on one block and me on the other.

Q. You have known this defendant ever since he moved out there?

A. That is right.

Q. Did you have an opportunity to see him every day since he has been living out there?

A. That is right.

Q. Did you observe him in the neighborhood?

A. Every day. When he went with his father sometimes to the church.

Q. That would be around in the community and neighborhood and at the Baptist Church you observed him?

A. That is right.

Q. Do you know his general reputation in that neighborhood?

A. In the past I would tell you I know nothing bad of him at all.

[fol. 419] Q. And then could you say his general reputation in the community in which he lives was good?

A. As far as I know.

Q. Is he a boy who stayed around home?

A. Yes, sir. Now and then he would be out sometimes with other boys like any other boy would be.

Q. And generally would he be around home with the neighbors around there?

A. That is right.

Q. What was he doing usually in the community out there when you saw him?

A. Sometimes he played ball out there with other boys.

Q. Did you see him playing other games?

A. Yes, sir.

Q. Base ball?

A. Yes, s

Q. You say his reputation is good?

A. As far as I know.

Q. Did you testify in the other trial that he had?

A. Did not. I was here all right. I never did have nothing to do with the first.

Q. Did you get a chance to see him at the other trial?

A. Yes, sir, I saw him.

Q. Did you notice whether he had a mustache, or not, during that trial?

A. He wasn't as old as he is now.

Q. Did you notice whether he had one, or not?

A. No, sir, I sure didn't.

(No Cross-Examination.)

JESSE COOKE, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name and address, please?

A. Jesse Cooke, 2426 West Edgemont.

[fol. 420] Q. That is here in Montgomery?

A. That is right.

Q. What is your occupation?

A. Teacher.

Q. Where do you teach?

A. Booker Washington High School.

A. How long have you been working there?

A. About eight years.

Q. What do you teach at Booker Washington?

A. Coach basketball and teach English.

Q. Basketball and English?

A. Yes, sir.

Q. Is that what you were teaching in 1952?

A. In 1952 I was teaching History and Band.

Q. History and Band?

A. That is right.

Q. When you say band you mean music?

A. Music.

Q. You taught History and in charge of the band at the high school?

A. That is right.

Q. All type music work?

A. That is right.

Q. Do you know Jeremiah Reeves, Junior?

A. I do.

Q. How long have you known him?

A. I have known him, I would say, approximately about two or three years. I couldn't say definitely because he was a student just like several others.

Q. Do you mean two or three years from this time or two or three years from November, 1952, when you testified in his previous hearing?

A. I knew him as a student for two or three years.

Q. You knew him as a student for two or three years?

A. Yes, sir.

Q. So when you testified previously you had known him several years as a student, two or three years?

[fol. 421] A. Whatever way I put it, I imagine it is right. I couldn't just be definite about it now.

Q. Now, you teach at Booker Washington. Does that include lower grades also?

A. Yes, sir, in that school, but I don't teach the lower grades.

Q. As band master did you teach Jeremiah in the band?

A. Yes, sir.

Q. At Booker Washington High School?

A. Yes, sir.

Q. You had been teaching him several years, anyway; two or three?

A. He was in the band about three years.

Q. Was he in the orchestra out there?

A. We don't have an orchestra.

Q. You had a band. Perhaps that is what is meant here. He was in the band out there?

A. Yes, sir, the school band.

Q. I would like to refresh your recollection, just like to clarify one point. In your testimony in November of 1952—if there is no objection I would like to read this.

The Solicitor: We have no objection.

By Lawyer Hall:

Q. In November, 1952, a question was put to you: "He was in the orchestra, as I remember?" And your answer was: "Yes." You meant then, of course, the band?

A. That is right.

Q. That wasn't quite clear in my own mind. What was his conduct in your classes and under your supervision out there in the school?

A. I only had him in the band and I didn't have any trouble with him.

Q. What was his conduct there wherever you had him?

A. It was all right, I would say.

Q. You say all right. You say good or bad?

A. Well, naturally, it would be good when I say all right.

Q. Up until the time he was arrested how often did you see Jeremiah Reeves previous to that in the two or three years you had known him?

A. I would say for the first two years I saw him quite regularly.

[fol. 422] Q. Would that be every day?

A. Every school day.

Q. Every school day?

A. Yes, practically every school day.

Q. And the last year?

A. In the last year he didn't attend regularly.

Q. He didn't attend school regularly?

A. Regularly.

Q. You didn't see him often?

A. No, I didn't.

Q. Did he ever lead the band or orchestra out there?

A. Did he ever lead it?

Q. Yes.

A. No student ever leads.

Q. Are you pretty well acquainted with the reputation of Jeremiah Reeves in this particular community in which he lives?

A. I knew him at school.

Q. That is the only place you would have any knowledge of his reputation?

A. I didn't have any dealings with him outside of school.

Q. You know nothing about his reputation out side of the school or in this community?

A. Well, I wouldn't want to say anything about his rep-

utation outside because I wouldn't be in a position to see him. I know him as a student.

Q. As a student what was his reputation?

A. Well, as long as he stayed in school I could see his conduct, and it was all right.

Q. As a student was his reputation generally good?

A. In the first two years he stayed in school pretty regularly, and in the last year, the last year before this case happened, he wasn't coming to school regularly.

(No Cross-Examination.)

[fol. 423] AMOS HARVEY, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please?

A. Amos Harvey.

Q. Where do you live?

A. 949 Monroe Street.

Q. Your occupation?

A. Operator of a wood and coal yard.

Q. Where do you operate a wood and coal yard?

A. 949 Monroe Street.

Q. That is in the City of Montgomery?

A. City of Montgomery.

Q. How long have you operated that wood and coal yard?

A. About twelve years.

Q. Do you know this defendant here, Jeremiah Reeves, Junior?

A. I do.

Q. How long have you known him?

A. Since a small kid.

Q. To your best knowledge how old was he when you first knew him?

A. Do you mean how old he was?

Q. How old he was?

A. I don't exactly know because it was really since he was born.

Q. Do you by any chance belong to the same church he does?

A. Same church.

Q. Acquainted with his parents?

A. I am.

Q. Had you seen him often up to the time he was arrested in this cause?

A. How?

Q. Did you see him fairly regularly until the time he was arrested?

A. Mostly if he came around.

Q. Would you say almost every day?

A. Do you mean was he around most every day?

[fol. 424] Q. Yes.

A. Well, until he moved, and then I didn't see him every day, and every Sunday I went to church I would see him, and when he was going to school he came by sometimes during the week, but not very much.

Q. Up to the time he moved to Gravel Pit Lane you saw him most every day?

A. Most every day.

Q. Would that be about two or three years before he was arrested?

A. That is about right.

Q. After that you saw him at least on Sunday at the church?

A. Yes, and occasionally during the week, but I wouldn't say every day.

Q. Occasionally during the week?

A. That is right.

Q. Do you know his general reputation in the community in which he lives?

A. Yes, sir.

Q. Would you say it was good, or bad?

A. I would say it is good.

Q. His reputation or character in the community he lives is what?

A. Good.

Q. Did you testify previously in this cause in 1952?

A. How is that?

Q. Did you testify, were you a witness?

A. No, I wasn't. I was subpoenaed but didn't get here; I was sick.

Q. How long have you known Jeremiah to wear a mustache?

A. I have known that more than twenty years. Do you mean his daddy?

Q. Jeremiah wearing a mustache?

A. Do you mean clothes he has there?

Q. A mustache.

A. I don't understand you.

Q. How long have you known him to wear a mustache?

A. Oh. Well, now, I will be fair and tell you the truth. I haven't paid attention to that. I just really haven't, to tell you the truth about it.

[fols. 425-429] Q. Have you any impression how long he has been wearing it?

A. No. I wouldn't, sure wouldn't. I want to be fair and tell you the truth, I don't know how long.

Q. You don't know how long, but when you saw his face and looked at him he appeared natural?

A. Natural.

Q. You have the impression he has always had it; is that right?

A. Sometimes. He looked like that all the time.

Q. What kind of a hat did Jeremiah usually wear?

A. Well, sometimes, mostly see him with a cap, and sometimes a hat, but I just didn't pay any attention to what kind of a hat he wore.

Q. You have seen him with a cap or a hat on?

A. I have seen him with a cap or hat. I didn't pay any attention to testify exactly what color it would be.

Q. Do you sing in the choir of your church?

A. No, I don't.

Q. Are you an officer of the church?

A. I am an officer of the church.

Q. What office do you hold?

A. I am a Deacon, and I am the Treasurer of the church.

Q. Is Jeremiah a regular member of the church?

A. He is, and a choir member too.

Q. He attended that church regularly?

A. Yes, sir, he did. He was a member of the Shiloh Baptist.

Q. And attended choir practice?

A. Yes, sir.

Q. And you testified his general reputation was good in the community in which he lived?

A. It is my personal opinion it was good.

(No Cross-Examination.)

[fol. 430] The Solicitor: At the request of the defendant it is stipulated by and between the defendant, his counsel, and the State, that Rebecca Mitchell, who was called as a witness for the defendant in the former trial of this cause, is now dead, having died during the month of May, 1955. It is further stipulated that the testimony taken by the Court Reporter of her testimony, and about to be read into the record, is a true and accurate copy of the testimony as given at the former trial of this cause in November, 1952.

Lawyer Hall: At this time we would like to introduce and read it into the record.

The Court: The Court will receive this evidence.

The Solicitor: We want all of it introduced, both Direct and Cross Examination.

The Court: The entire evidence may be admitted and read from the photostatic copy, the same which the Court has held to be duly authenticated.

(Testimony referred to and offered as evidence marked "Defendant's Exhibit 12, 6-1-1955, WHL")

Said testimony read to the Jury, Lawyer Hall reading the questions and Lawyer Billingsley reading the answers, as follows:

FANNIE MITCHELL, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McGee:

Q. Your name is Fannie Mitchell?

[fol. 431] A. Rebecca Mitchell.

Q. Do you live here in Montgomery?

A. Yes, sir.

Q. How long have you lived here in Montgomery?
A. All of my life.
Q. All of your life?
A. Yes, sir.
Q. Do you know the defendant here, this boy here?
A. Yes, sir.
Q. How long have you known him?
A. Five years.
Q. Where do you live?
A. 15 Gravel Pit.
Q. Where is that?
A. Out there near the T. B. Sanitarium.
Q. Way back over in North Montgomery?
A. Yes, sir.
Q. Is that anywhere close to where——
A. Right next door to him.
Q. Is that in the same house or the house next door?
A. House next door.
Q. How long have you lived out there?
A. Five years.
Q. You have lived out there five years?
A. Yes, sir.
Q. In other words, you have known him ever since you have lived out there?
A. That is right.
Q. Do you remember back to the date of July 28th of this year?
A. Yes, sir.
Q. On a Monday?
A. Yes, sir.
Q. On that particular day did you at any time see this defendant?
A. I certainly did. He was around all that day.
Q. What time?
[fol. 432] A. Well, from 11 o'clock until 4 o'clock.
Q. From 11 o'clock until 4 o'clock?
A. Yes.
Q. Where was he from 11 to 4?
A. At my house. We were playing dominoes. He wasn't playing, but he was there with us.
Q. You say he was playing dominoes in your house on July 28th of this year?

A. Yes, sir.
Q. From 11 o'clock to 4 o'clock?
A. Yes, sir.
Q. From 11 o'clock to 4 o'clock at night or what?
A. Day.
Q. In the morning?
A. That is right.
Q. 11 o'clock in the morning until 4 o'clock in the afternoon?
A. Yes, sir.
Q. Are you positive?
A. Yes, sir.
Q. And that is next door to where he lives?
A. Yes, sir.
Q. You live way out here near the Fresh Air Camp, they call it?
A. That is right.
Q. In the five years you have known him do you know his general reptuation in the community?
A. Yes.
Q. Is it good or bad?
A. It is good.
Q. It is good?
A. Yes.
Q. Have you some children in your home?
A. Yes.
Q. Who was you playing checkers with?
A. My next door neighbor, and me, and a girlfriend from town.
Q. What next door neighbor, some other next door neighbor.
[fol. 433] A. Yes.
Q. Who is that?
A. Willie Mae Bates.
Q. Anybody else there?
A. Well, me and the children and him.
Q. You and the children?
A. Yes.
Q. How many children have you?
A. Four.
Q. Are they small?
A. Yes, sir.

Cross-examination.

By the Solicitor:

Q. What day of the week was that?
A. On the 28th.
Q. What day of the week?
A. Monday.
Q. Did you see him the Monday before that?
A. Yes, sir. I have seen him every day during the week.
Q. You have seen him every day during the week?
A. Every day during the week.
Q. Did he play dominoes with you the Monday before?
A. Well, if there was anybody to play, he would always.
Q. Do you know about that day at all?
A. He would stop awhile and talk, and sit there talking. That is every day he was around there.
Q. How was he dressed that day?
A. Well, he just had on his blue jeans and a shirt. That is all.
Q. Polo shirt?
A. Yes, sir.
Q. What color shirt?
A. White color shirt.
Q. White shirt?
A. Yes, sir.
Q. Did he play dominoes over there every day that week?
[fol. 434] A. Yes, sir.
Q. Every day that week?
A. Every day.
Q. Did he play dominoes every day the next week?
A. Sometimes he didn't play every day, but he played sometimes.
Q. How many days during the next week did he play dominoes over there?
A. When we could get up a game.
Q. Did he play dominoes over there the next Monday?
A. Yes, sir.
Q. Did he play Tuesday?
A. No, sir, he didn't play Tuesday.
Q. Did he play Wednesday?
A. Yes, sir, he played Wednesday.
Q. Did he play Thursday?

A. No, sir, he didn't play.
Q. Did he play Friday?
A. No, sir.
Q. Did he play Saturday?
A. No, sir.
Q. Did he play Sunday?
A. No, sir, he didn't play Sunday.
Q. July, I am talking about, the week of July the 28th. That would be in August. During the first week of August did he play Monday?
A. Yes, sir.
Q. Play Tuesday?
A. Yes, sir.
Q. Play Wednesday?
A. No, sir.
Q. Play Thursday?
A. No, sir.
Q. Play Friday?
A. No, sir.
Q. Play Saturday?
A. No, sir.
[fol. 435] Q. Play Sunday?
A. No, sir, he didn't play Sunday.
Q. How about the next week, the second week of August? Did he play dominoes at your house that week?
A. No, sir, he didn't play that week.
Q. Didn't play at all that week?
A. He played on Friday.
Q. How do you know that week he didn't play?
A. Well, because every day during that time I wasn't washing or nothing he was around home he would play when I asked him.
Q. In other words, he played all the time you were not washing, he played dominoes with you?
A. Yes, sir. And he was around there holding my baby.
Q. The second week of August you were washing?
A. I wash every day.
Q. How was he dressed, on Wednesday, the second week of August?
A. In blue jeans and an old cotton shirt on.
Q. How was he dressed Wednesday the second week?
A. Well, he had on a shirt and blue jeans-pants.

Q. Have you ever seen him in other clothes besides that?
A. No more than Sunday he was dressed up going to church.
Q. Ever see him in these blue pants there? (Indicating)
A. Yes, sir; I have seen him in those a lot.
Q. That is when he was going to church?
A. He was going to church.
Q. Ever saw him in those clothes other than when he was going to church?
A. When he went out and went to a dance. And, of course, he kept them pants nice when he needed them to do something.
Q. Did he take you to the dance?
A. No, sir, he didn't take me, he just went along.
Q. Just went along with you?
A. Yes, sir.
Q. He hung around your house quite a bit?
A. He wasn't there all the time.
[fol. 436] Q. Are you his girlfriend?
A. No, sir; I am not his girlfriend. Well, he is seventeen and I am eighteen.
Q. Let us go back to the first week in June. Did you play dominoes with his during that week?
A. Well, some.
Q. Do you know whether you played dominoes with him on Monday, the first week of June?
A. No, sir; I don't remember that.
Q. What about Tuesday?
A. Well, we played about twelve on Tuesday.
Q. What time did you start playing on Tuesday? This is the first week of June.
A. Yes, sir.
Q. What time did you start playing?
A. About twelve, and played until about four.
Q. What time did you quit?
A. Played until about four o'clock.
Q. He played dominoes with you that day?
A. He sure did.
Q. How was he dressed that day?
A. He had on the same shirt and pants.
Q. That is Tuesday, the first week of June?
A. That is right.

Q. Do you know what date that was?

A. No, sir; I don't remember what date.

Q. How is it you know the 28th day of July and you don't know the date of Tuesday, the first week of June?

A. We was looking at some names, and we all agreed they had the wrong party, some got a calendar and started looking to find out.

Q. You tell me you played dominoes with him Tuesday, the first week of June?

A. Yes, sir.

Q. You tell me you played Wednesday, the second week in August, with him?

[fol. 437] A. Yes, sir.

Q. What date was that?

A. Well, I don't know what date.

Q. Do you remember what time you started that morning?

A. We would start around twelve, because that is the time I get through doing my washing.

Q. Played dominoes with you every day?

A. Yes, sir, plays dominoes over there every day.

Q. Every day?

A. Yes, sir.

Q. Hasn't missed a day in a year?

A. Not since I have been living around there. In fact, since I have been living there he is around his house and my house, as far as I could see. He just acted like he wanted to stay home or something or other. He just didn't never act right.

Q. He played dominoes at your house on the 10th day of November?

A. Well, let me see where we were on the 10th. He was there, but didn't play dominoes.

Q. He was there with you, but didn't play dominoes?

A. Yes, sir. Watched the children then.

Q. What time did he come over there that day?

A. He came over that morning, and he went back home and came back again.

Q. What time did he get there that morning?

A. He got there when he got up. I reckon about eight o'clock or something.

Q. How long did he stay over there?

A. He stayed quite awhile.

Q. Did he stay until twelve or one o'clock?
A. No, sir. He went back home.
Q. Give the time.
A. About nine o'clock, I say.
Q. What time did he come back again?
A. Came back about one.
Q. How long did he stay there?
[fol. 438] A. He sat around until his mother came in, because I remember she called him during that time.
Q. That is on the 10th day of November?
A. Yes.
Q. Do you know what day that was?
A. No, sir; I sure don't. I don't know exactly what day it was.
Q. You remember everything that took place on the 10th day of November; is that what you are telling us?
A. Yes, sir.
Q. Don't you know he was arrested and taken to Kilby Penitentiary about 2 o'clock on November the 10th?
A. November 10th?
Q. November 10th. That is what I said.
A. He was around there.
Q. He was arrested and taken to Kilby Penitentiary at 2 o'clock on November the 10th.
A. I think he was around there.
Q. Who have you talked to about this case?
A. I haven't talked to nobody about it.
Q. Haven't mentioned it to anybody?
A. No, sir.
Q. Haven't talked to any lawyer about it?
A. No, sir. I haven't even seen a lawyer.
Q. They didn't know what you were going to say when you got up here?
A. No, sir. When he came after me I was doing washing.
Q. Your testimony about November 10th is just as true as anything else you have said?
A. As far as I know. They have it mixed up. As far as I know it was.
Q. Could you tell us what you had for dinner on July 28th?
A. July 28th?
Q. That is right.

A. I think probably I could July 28th we had turnip greens and corn bread and milk for dinner.

Q. Did you feed him on November 10th?

[fol. 439] A. I didn't feed him November 10th.

Q. You tell us he came at 1 o'clock and stayed until his mother called him on November 10th; that is what you testified to, wasn't it?

A. I must have meant July the 28th.

Redirect examination.

By Mr. McGee.

Q. Are you positive it was Monday, July 28th, when he stayed with you?

A. Yes, sir; I am positive of that.

Q. You said at that time he was dressed in a pair of blue jeans.

A. Yes, sir. I do remember that.

Q. And that is out at what place?

A. Out at the Gravel Pit.

Q. What address?

A. Route three.

Q. It didn't have a house number?

A. 15.

Q. 15 Gravel Pit?

A. Yes, sir.

JEREMIAH REEVES, JUNIOR, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. State your name, please.

A. Jeremiah Reeves, Junior.

Q. You are the defendant in this cause?

A. I am.

Q. How old are you now?

A. I am nineteen years old.

Q. What is your birthday?

A. August 8th, 1935.

Q. On August 8th, 1955, you will be twenty years old?
A. That is right, correct.
[fol. 440] Q. Do you remember July 28th, 1952?
A. I do.
Q. Do you recall what day of the week it was?
A. It was Monday.
Q. How do you remember?
A. Because we were playing Monday, Wednesday and Friday. It was at the Sepia Club.
Q. The Sepia Club?
A. That is right.
Q. What is the Sepia Club?
A. A Night Club.
Q. A Night Club?
A. It was.
Q. Where was it located?
A. On Day Street.
Q. Day Street?
A. Yes, sir.
Q. And in 1952 you were playing what days there, Monday, Wednesday and——
A. And Friday, Sunday, and Monday night.
Q. You were playing Sunday and Monday night, Wednesday and Friday?
A. No, sir, not correct. I was playing Friday, night, Sunday night and Monday night.
Q. On July 28th, 1952, between the hours of eight and twelve o'clock, or eight and one o'clock in the day, where were you?
A. I was at home. At home—I was.
Q. How do you know positively you were home?
A. Because later that day the police came around checking on everybody, and acted like to me something had happened and they had been inquiring around, I suppose, all over town, and they picked me up and brought me back to headquarters.
Q. Is that on July 28th?
A. July 28th.
Q. 1952?
A. It was.
[fol. 441] Q. What time of day was that?
A. I cannot recall.

Q. In your best judgment, what time of day was it?

A. It was after twelve o'clock anyway.

Q. After twelve o'clock?

A. Yes, sir, it was.

Q. Would you say about one?

A. I cannot remember that exactly. Anyway, I know it was after twelve o'clock.

Q. Picked you up that day; that is July 28th, 1952?

A. Yes, sir.

Q. And the police picked you up along with other persons and brought you to Police Headquarters on some charge?

A. City Headquarters.

Q. And later did they release you?

A. Yes, they did.

Q. What time?

A. Around nine or ten o'clock, I suppose, P. M.

Q. Nine or ten P. M.?

A. That is right.

Q. You were sitting here in the Court Room when Mrs. Crowder testified?

A. I was.

Q. And she also testified in your previous hearing on November 15th, I believe, 1952?

A. That is right.

Q. Was that right?

A. She did.

Q. And she also came down to the County Jail to see you sometime after they picked you up in November, 1952?

A. She did, right.

Q. Had you ever seen Mrs. Crowder before she came to the County Jail in 1952?

A. I never did see Mrs. Crowder at the County Jail, but I did see her at the City Hall.

Q. At the City Hall?

[fol. 442] A. Yes, sir.

Q. Had you ever seen her before you saw her at City Hall?

A. Not previous, no, I didn't.

Q. Had you ever seen her?

A. No, sir, I hadn't.

Q. Did you rape Mrs. Crowder?

A. I did not.
Q. Did you assault her?
A. I did not.
Q. Did you choke her?
A. I did not. I never saw her before.
Q. Have you ever been in her home?
A. I have not.
Q. Were you on Cleveland Avenue or thereabouts in the vicinity of her home the day she alleges to have been attacked?
A. No, sir, I wasn't.
Q. That is the 28th day of July, 1952?
A. Yes, sir.
Q. Are you a musician?
A. I am.
Q. What instrument do you play?
A. Drums and vocal.
Q. Drums and vocal?
A. And singing.
Q. You sing also?
A. I do.
Q. You say on Sunday nights you played at some club?
A. Sepia Club.
Q. How late did you work Sunday nights?
A. It all depends. In other words, our contracts call from nine till one, unless we were playing a breakfast dance from two to six. Most of the time we don't play breakfast dances, unless it is a holiday. All other times they are from nine to one.
Q. On that one Sunday before Monday, July 28th, 1952, that Sunday night, do you know whether or not you played [fol. 443] a breakfast dance on this morning?
A. We didn't play a breakfast dance at all.
Q. You played the Sunday night before Monday, July 28th?
A. I did.
Q. You were through about one o'clock; is that correct?
A. That is right, correct.
Q. When you got through around one o'clock, how long did it usually take, what time did you get home that morning, do you recall?
A. No, sir, I don't, because I would come in at different

times after a dance. Lots of times after the dance finished we would just sit around and we had something to eat, or for recreation go out to the Jeff Davis Recreation Center sometimes until almost daylight.

Q. In your best judgment, what time did you get home the morning of July 28th, 1952?

A. I cannot say, but it wasn't late.

Q. When you worked Sunday nights how long did you usually sleep before you get up the next day?

A. I would always sleep until ten-thirty, eleven o'clock in the day time.

Q. And you did that on that Monday, July the 28th?

A. Every night; I believe I did.

Q. Did you leave home at all that day until the police came?

A. I cannot remember.

Q. When I asked you if you left home, I mean for any appreciable period of time; did you go to town, recall going to town, or any place else?

A. No, sir, I cannot.

Q. I don't mean that you went around the community. You didn't leave your community, did you?

A. I did not.

Q. Do you recall the arrest on November 10th, 1952?

A. I do.

Q. Where were you arrested?

A. The eastern part of town, on the corner of Union and Washington Avenue.

[fol. 444] Q. Approximately what time of day?

A. It was at two-ten.

Q. Here in down town Montgomery?

A. Yes, sir, just right across from the Capitol Building.

Q. What were you doing at the time of your arrest?

A. I was going back to school.

Q. Going back to school?

A. Yes, sir.

Q. Who arrested you?

A. Deputies Wilson Armstrong and Mr. J. T. Talley.

Q. How far is that from the corner to down town Montgomery, do you think, the corner where they arrested you, how far is that from down town Montgomery, how far is

that from down town Montgomery, the place where they arrested you?

A. It is about a block, two blocks, I guess, I would say.

Q. You got to bear in mind these gentlemen got to hear you. Speak up loud and clear so His Honor and all these men can hear you. You say you were about two blocks from the center of Montgomery when these two Deputy Sheriffs arrested you?

A. I was.

Q. What did they do when they arrested you, what happened?

A. Well, Mr. Armstrong and Mr. Talley, they weren't the first to reach me. A patrolman stopped me first a Highway Patrolman. He stopped me as far as from here to that bannister out there. (Indicating) He called me, he said, "Hey, boy." I turned around and walked back to him and said "What did you want?"

Q. Was this highway patrolman in a car with the two Deputy Sheriffs?

A. No, he wasn't. He was in a car by himself, they wasn't with him.

Q. Was he parked along the road or driving along the highway?

A. He drove along and parked at the corner of Union and Washington.

Q. Go ahead.

A. And he called me. I turned around and came back to the car to see what he wanted. And by that time Deputies Wilson Armstrong and Mr. J. D. Talley drove up, and Mr. Armstrong says, "That is him, I know him." He told me to get in the car, and I did. We came back here on [fol. 445] Washington Avenue to the County Jail, and to the best of my knowledge, the best I recall, I stayed there about five or six minutes, and they run me out to the death row at Kilby Prison. Not the death row, it wasn't the death row, the death cell.

Q. They put you immediately in the death cell at Kilby Prison?

A. That is right.

Q. When they took you down to the County Jail did they tell you what you were charged with?

A. No, they didn't. Not at all. One of the officers—I

cannot recall who he was—anyway, he said, "You don't need a trial."

Q. Did they read a warrant to you?

A. No warrant. Haven't seen a warrant to this day.

Q. Did they advise you you were entitled to counsel?

A. Didn't advise me anything. Told me I couldn't see nobody.

Q. Did they tell you that you didn't have to testify against yourself?

A. Yes, sir. I testified. I had to.

Q. Were you frightened?

A. I was.

Q. Were you beaten?

A. Not beaten.

Q. But you were frightened?

A. I was.

Q. Were you threatened?

A. I was.

Q. You were taken immediately to Kilby Prison?

A. I was.

Q. How long did you stay there?

A. At Kilby Prison?

Q. Yes.

A. Why, two years and four months.

Q. How long did you stay at Kilby before you were allowed to see your father and mother?

A. From Monday afternoon—I was arrested on Monday—and saw my mother on Thursday afternoon.

Q. You were arrested November 10th?

[fol. 446] A. It was.

Q. Is that right?

A. Yes, sir, it was.

Q. Did you ask them to let you see your mother and father?

A. I did.

Q. Ask them to send you a lawyer?

A. I did.

Q. They refused to do so?

A. They did.

Q. I will ask you this. On what date were you tried the last time, the first time, do you recall?

A. No, I don't, but I do know it was the latter part of November.

Q. Assuming it was November 15th, 1952; is that correct, is that approximately the right date?

A. I cannot say, but I suppose it was.

Q. It might be possible you were arraigned on that date. Between the time of your arrest and the time of your trial were you given a preliminary hearing, were you given any hearing at all except the trial that you had the last time?

A. I came here to the Court House once after that.

Q. You did?

A. I did.

Q. Did they have any witnesses at the Court House at that time?

A. In my defense?

Q. Against you here before a judge? Did you have an attorney?

A. Well, I did. I am not sure, but I think Mr. McGee represented me then.

Q. That is not in a preliminary hearing?

A. No, sir.

Q. Did you have two trials?

A. No, sir.

Q. Or one?

A. One.

Q. One trial?

A. Yes, sir.

[fol. 447] Q. And Mr. McGee represented you?

A. Yes, sir.

Q. You didn't have any other trial but that one; is that right?

A. I was there when they arraigned me and for the trial.

Q. At the arraignment and at the trial?

A. Yes, sir.

Q. There was no preliminary hearing at all?

A. No, sir, not as I can recall.

Q. None whatever?

A. No, sir.

Q. You were kept at Kilby Prison until the time of your trial, is that true?

A. I was brought back here a few days or a week, I sup-

pose, before the trial, and stayed over at the County Jail.

Q. Did anyone ask you whether or not you wanted a preliminary hearing, did they talk to you about a preliminary hearing?

A. No, sir, they didn't.

Q. Did anyone tell you you were entitled to a preliminary hearing?

A. No, sir, they didn't.

Q. Anybody tell you you were entitled to the advice of counsel?

A. No, sir.

Q. Or a lawyer?

A. No, sir.

Q. You had never seen Mrs. Crowder until you saw her at the last trial?

A. I did not.

Q. Never in your life time?

A. Not in my life.

Q. How far did you go in school?

A. Eight.

Q. Were you still in school when you were arrested?

A. No, sir, not going any regular school hours. I didn't go any.

Q. You didn't go any regular school hours?

A. No, sir, I didn't.

Q. Why?

[fol. 448] A. Because I had been playing music and I couldn't keep up with my school studies and play music, and I did prefer music.

Cross-examination.

By the Assistant Solicitor:

Q. You heard your friends and church members come and tell about your good reputation today, haven't you?

A. I did.

Q. You have told us about being arrested on July the 28th, I believe?

A. It was on the 28th, and I was picked up and held in the City Hall.

Q. Is that the first time you had ever been arrested?

A. It was. Correction. It wasn't the first time I had

been picked up. I had never been arrested on any charges, but I had been picked up just on suspicion, but never was arrested on a case. I only been picked up before that on suspicion.

Q. Picked you up on suspicion in this case before?

A. Never.

Q. What?

Lawyer Billingsley: We object on the ground that it is irrelevant, incompetent and immaterial.

The Court: He can testify he was picked up. I don't think we need go into what he was picked up for, other than picked up on suspicion.

By the Assistant Solicitor:

Q. How long before the 28th of July were you picked up on suspicion?

A. I don't know.

Q. Was it more than a year before that?

A. I don't know.

Q. Was it within thirty or forty days before that?

A. It was longer than that.

Q. Longer than thirty days?

A. It was.

Q. Six months before that?

A. I don't know.

Q. Three months before that?

A. I don't know.

[fol. 449] Q. Were you picked up more than once?

A. No, only once.

Q. Before that?

A. Yes, sir.

Q. What happened to that charge; was it thrown out?

A. Well, I wasn't arrested, I was just held——

Lawyer Hall: We are going to object to that.

The Court: Objection sustained, to the details of it, unless you want to go into something which is admissible along that line.

By the Assistant Solicitor:

Q. Were you discharged later?

A. I was.

Q. No charges made against you?

A. No charges.

Q. This time you were arrested on July 28th—that is when you were arrested?

A. I wasn't arrested then.

Q. You were not?

A. I said they picked me up on suspicion, and they always question you here.

Q. You were taken into custody, if that word suits you any better?

A. I guess so.

Q. You were picked up?

A. I was picked up.

Q. Who picked you up?

A. Policemen.

Q. Do you remember their names?

A. No, I don't, because they were special detectives, I suppose. They were all over town on the 28th, and in my neighborhood.

By the Court:

Q. I want to clear one thing. You said they picked you up on the 28th. Was it the 28th or later?

A. It was the 28th or the day after.

By the Assistant Solicitor:

[fol. 450] Q. Which one, the 28th or the 29th?

A. I think it is one of those days.

Q. They never charged you with anything when they picked you up?

A. They never told me anything.

Q. What did they do with you when they picked you up?

A. First they carry me to City Hall.

Q. And what happened at the City Hall.

A. Put me in a cell.

Q. Never told you what they picked you up for?

A. No, they didn't.

Lawyer Hall: We are going to object to this line of questioning—I haven't questioned him previously on that—on the ground it is incompetent, immaterial and irrelevant. The defendant has admitted, as a matter of fact, and testi-

fied he was picked up, and as to what happened, or didn't happen, has no bearing at all on his testimony and isn't legitimate Cross Examination.

The Assistant Solicitor: The State understands because of his lawyer's question he fixed the date of July 28th in his mind, because on that date he was picked up by the City Police. He knows whether or not it is that day or the next day. It is very material because this man has fixed July 28th in his mind in order to provide himself with an alibi. I understand it is agreed it was on that day. We think it is very material that we be allowed to go into what happened to him on that day that fixes it in his mind.

The Court: I asked him that direct question.

The Assistant Solicitor: I want to find out if he was taken down to the City Jail.

By the Court:

Q. You may answer that.

A. I have told him I was confined in a cell down in City Hall.

By the Assistant Solicitor:

Q. How long were you confined in a cell down there?

A. About an hour. Later, I suppose, they carried me to the City Jail.

Q. Do you mean the City Jail on Ripley Street opposed [fol. 451] to the City where they had taken you?

A. That is right, correct.

Q. Who took you to the City Jail?

A. I don't know. Police officers. I do know that much.

Q. What happened to you when you were taken out to the City Jail?

A. I stayed there a few hours.

Q. How many hours?

A. I don't know exactly, but I would suppose it was after nine o'clock, or almost ten o'clock when they turned me loose.

Q. Nine or ten o'clock that night?

A. That is right.

Q. You were released from the City Jail?

A. I was.

Q. You have said that is on the 28th or 29th. Of those two dates which one was it?

A. I don't know.

Q. When you got out of the City Jail about nine or ten at night what did you do then?

A. I went home.

Q. While you were at the City Hall in custody of the police and while you were at the City Jail do you know whether or not people were brought in to look at you?

A. No.

Lawyer Hall: I am going to object to this line of questioning.

The Court: The answer is no. What is your objection, to any further questioning along this line?

Lawyer Hall: Any further questioning along this line is not Cross Examination of anything we have asked the witness about.

The Court: We would have to see if they have any more questions and pass on your objection at that time. I don't know whether there will be any more questions.

By the Assistant Solicitor:

Q. On July 28th or 29th, the date you said you were picked up by the City Police, did you have a mustache?

[fol. 452] A. I did.

Q. Did it look about the way it is now?

A. That is right, but it wasn't as heavy as it is now.

Q. Before November, 1952, was your mustache heavier or lighter than it is now?

A. It was lighter.

Q. How long have you had that mustache?

A. My mustache?

Q. Yes. How long before July 28th or 29th had you had that mustache?

A. I have been having a little mustache ever since I was about ten or eleven years old, a light mustache, I suppose, and only started trimming it or paying much attention to it when I was thirteen or fourteen.

Q. Have you ever been clean shaven or always let your mustache grow?

A. When I was in Kilby I was clean shaven.

Q. Right before November 10th were you ever clean shaven?

A. I don't have to because I never had enough of it to shave.

Q. Never shaved the hair off your upper lip?

A. I have not.

Q. Only trim it?

A. That is right.

Q. From the first time it began to grow, a mustache on your upper lip, you let it grow, now you only trim it and never shave it off?

A. I don't trim it. I probably attempted to, but I don't.

Q. You never shaved it off?

A. No, sir.

Q. Let me go back again until July 28th. What did you do that morning of July 28th?

A. What time?

Q. Well, from the time you got up until the police arrested you or picked you up?

A. I am sure they picked me up on the 28th. The night before the 28th I played music at night. I always get up at ten-thirty or eleven o'clock, and in the day we always have some boys, neighbors, around to pass the time, and have some work to do.

[fol. 453] Q. Now you tell us the 28th then was the day the police picked you up?

A. It was. That is what I tell you now. You didn't ask me this before when the police picked me up. You asked me what time did I get up.

Q. While you were in the custody of the police did you sign any statement or anything like that to help us fix the date?

A. What time, November 10th, or what?

Q. On July 28th or 29th do you remember signing anything?

A. I do not.

Q. Did they ever make any particular charge against you, charge you with any particular thing?

A. They did not.

Q. Didn't pick you up for anything that you know of?

A. They did not.

Q. Asked you to sign nothing?

A. They didn't.

Q. What name did you give them?

A. Jeremiah Reeves, Junior, or Jerry Reeves that time.

Q. You gave them your real name?

A. I did.

Q. I want to ask you this. Was that time, on July 28th or 29th, and the time you were arrested on November the 10th, are those the only two times you have ever been in the custody of the police?

Lawyer Hall: I object.

The Court: He was asked that question once before and it has been answered once before.

The Assistant Solicitor: I don't recall it being answered.

By the Assistant Solicitor:

Q. Between July 28th and 29th were you arrested or taken into custody at any time up to November 10th?

Lawyer Hall: I object to the defendant's answering that as incompetent and immaterial.

The Court: We have been over that two or three times [fol. 454] and I sustain the objection.

The Assistant Solicitor: I understood he was arrested once before July 28th.

The Court: That is what I understood him to say. You asked the same question before and I sustained the objection to it.

The Assistant Solicitor: I said between July 28 and November 10, was he arrested or taken into custody?

The Court: Just ask him one more time and that will be the last. He can answer it yes or no.

Lawyer Hall: We take an exception.

The Court: Exception granted the defendant.

By the Assistant Solicitor:

Q. Answer it.

A. Well, I have never been arrested when did you say?

Q. Between July 28th and November 10th.

A. I cannot remember. I don't think so.

Q. Let me go back to the date of July 28 and 29. What did you do that morning, did you do anything up until you were taken into custody?

Lawyer Billingsley: That is the same question.
The Court: He hasn't answered that question before.
The Witness: What did I do that day?

By the Assistant Solicitor:

Q. Yes.
A. I guess I did about the same usual daily routine; I get up and do what ever I like.
Q. Have you a recollection of what you did, or recall those things you did that day?
A. Different things I am not positive what I did at that time.
Q. Do you recall specifically playing checkers with this girl Rebecca on the 28th?
A. On what date?
Q. Do you recall specifically playing checkers with Rebecca any time on that day?
A. I do.
Q. What time?
[fol. 455] A. In the morning.
Q. Was that the same day you were picked up by the police?
A. It probably was. I was shoved in jail when I was picked up.
Q. Are you able to remember what you did on July the 28th, the day Mrs. Crowder says she was raped?
A. I am telling you now.
Q. You said the 28th or 29th. I am asking you now about July 28th. Do you remember now anything that happened on that day?
A. I do.
Q. What?
A. Do you mean to explain what happened on that day?
Q. That is right.
A. In my neighborhood?
Q. Will you tell me now what happened on July the 28th, Monday?
A. Not anything unusual, because we was picked up on around that date; I was picked up along with others and brought to City Hall.
Q. Now, you don't know whether it was Monday, July the 28th, or not?

A. Not when I got picked up, I don't.

Q. What did you do on the 29th or some other date? Do you know what you were doing?

A. Playing.

Q. Playing what?

A. Different games. Probably checkers and dominoes, or golf, because we did play them all.

Q. Checkers, dominoes and golf?

A. That is right.

Q. Who did you play checkers with?

A. Fanny Mitchell.

Q. Anybody else?

A. Her husband, I think Mitchell. John Golthy, and the other boys around that neighborhood.

Q. Who did you play dominoes with?

A. I wouldn't know all because everybody in the neighborhood all played around there.

Q. Who did you play golf with?

[fol. 456] Q. Are you sure that is on Monday, the 28th of July?

A. I am.

Q. Can you name any who played golf with you?

A. I can.

Q. Who?

A. John Golthy—he would play sometimes.

Q. Did he play with you on Monday, July the 28th?

A. I don't know who all played there. I know I played.

Lawyer Hall: We object to his arguing with the witness.

The Court: It is not argumentative. He asked him if he knew who he was playing with. I overrule the objection.

Lawyer Hall: We take an exception.

The Court: You may have an exception.

By the Assistant Solicitor:

Q. Do you know who you played golf with on the 28th?

A. No, I don't, because nobody plays as steady, they just, at one time or another, they take their turn after another.

Q. When did that golf game take place?

A. It goes on during the day time, out in front of our home. There is a field out there almost in front of our home

Q. Now, on the morning of Monday, July the 28th, what did you play, what did you do to pas the time of day?

A. I recall one.

Q. What?

A. I remember first we were playing one game, I don't know whether it was golf or checkers or dominoes—I don't know which it was; but I know just when we was playing our game was interrupted by the police.

Q. You have testified it was Monday, the 28th, the police came and took you?

A. I said our game was interrupted by the police. They took us to City Hall, but I don't know what date it was. I do know they did interrupt the game.

Q. What did they say or do to interrupt the game?

A. Yelled, "Come over here, boy."

Q. You know who they were?

[fol. 457] A. I don't know.

Q. Were they in cars or walking?

A. Well, at the time I saw them they was in a car.

Q. They said, "Come over here, boy?"

A. That is right.

Q. Did you go over there?

A. I did.

Q. Did anyone go with you?

A. Do you mean all of the other boys?

Q. That is right.

A. They came over to the car.

Q. Name the people who went with you.

A. I cannot name their names because there was a lot of them, good many of them.

Q. Any of them been here today to testify?

A. No, sir.

Q. Do you know the whereabouts of any of them?

A. Not now I don't.

Q. Were they your neighbors out there at that time?

A. Most of them was.

Q. Can you recall the names of any of them?

A. Hasn't been on this witness stand.

Q. Can you recall the names of any of those boys?

A. No, I cannot, because it was a long time, and all of them wasn't even living right in the exact vicinity I lived, some lived on Kings Hill and Dixie Drive; they came

through the street I lived on going to the golf course, and we had several of them playing at one time.

Q. Let us go to November 10th, the day you were arrested, you testified, by Mr. Armstrong and Mr. Talley; is that right?

A. That is right.

Q. What time did you testify you were arrested?

A. It was at two-ten.

Q. You were on your way to the Booker Washington High School?

A. That is right.

Q. For what purpose?

[fol. 458] A. To help Mr. Lewis out with drummers, those just beginning, helping to learn to play drums.

Q. Had you been to school that day?

A. Do you mean the 10th?

Q. The day you were arrested by Mr. Armstrong and Mr. Talley?

A. I had.

Q. Had you gone home on the day I am talking about?

A. I didn't go home.

Q. What time did you leave school?

A. That morning?

Q. I don't know when you left. What time did you leave?

A. Well, the first time, I guess I left there nine forty-five.

Q. Left school?

A. That is when I went to school.

Q. What time did you leave school?

A. I left school about eleven fifty-four.

Q. Then where did you go?

A. Went down town for a meal.

Q. How long did you stay?

A. Until two ten.

Q. Then what did you do?

A. Started back to school.

Q. When this highway patrolman stopped his car where did he stop first?

A. He stopped his car at the corner of Union and Washington.

Q. That is the same corner where Armstrong and Talley arrested you?

A. That is right.

Q. When Mr. Armstrong and Mr. Talley picked you up I believe you told us they didn't tell you at all what they charged you with; what did you tell us about that?

A. Who? Mr. Armstrong?

Q. Yes.

Lawyer Hall: We are going to object. The question is what he is charged with.

The Court: He can tell what they told him, if anything.

[fol. 459] Lawyer Hall: We would like an exception.

The Court: Exception granted the defendant.

By the Assistant Solicitor:

Q. Go on and tell us what they said to you.

A. Again?

Q. That is right. Right there on the corner of Washington and Union.

A. I know what you are talking about now, sure do. Anyway, after he picked me up—it might have been Mr. Armstrong, I am not sure—one of the officers said, "Yes, that is him. I know him." And maybe it was the same officer, or maybe it was another, "Yes, he is the one." The statement was similar.

Q. Did he say, "Looks like him?"

A. No.

Q. What they meant was you were the one, or "He is the one," or "That is him?"

A. No. He made the statement before he even looked. He said, "He is the one."

Q. Did you ask them what they meant by "He is the one?"

A. I did not.

Q. Did they tell you when they took you down to the County Jail across the street what they wanted you for?

A. No.

Q. Gave you no idea what they were going to charge you with?

A. No.

Q. Did you ask them what you were charged with?

A. It is understood on November 10th I wasn't asking questions; I was listening.

Q. Did you ask at all?

A. I wasn't asking questions.

Q. Did you hear anybody say what you were charged with?

A. The officers?

Q. Yes, anybody at the county jail.

A. In the County Jail I didn't have a trial and I didn't know nothing about it, but on the way to Kilby I did.

Q. On the way to Kilby?

[fol. 460] A. Yes, sir.

Q. Who told you what they wanted with you, what you were charged with?

A. I don't know the names of the Deputies or the Sheriff's force over there, and I couldn't very well specify any Deputy.

Q. Tell me what was said about what you were charged with?

A. Asked me didn't I rape all these women? I looked at him and said, "No." He said, "You are the one, you might still go to the chair, but you go ahead and tell us the truth now." "Oh, Lord," I said, "I am not the one."

Q. Did they tell you——

The Court: Actually a great deal of time is being spent on what people said to him and what he said to people. I don't see the purpose of it.

The Solicitor: They went into it once.

The Court: It looks like we are going interminably into that question.

Lawyer Hall: We asked this defendant if he was charged at the time he was taken into custody. The State could introduce a warrant and we would agree.

The Assistant Solicitor: He said he had no idea what he was charged with. We know what he is charged with, and he knows.

The Court: He said on the way to Kilby he told him. I think he has answered the question. Why should we go over it again?

By the Assistant Solicitor:

Q. I have one more question along that line I would like to ask him. I want to ask a question now about the time you were picked up prior to July 28th or 29th. Did you at

that time sign any statement while you were in the custody of the police?

Lawyer Hall: No statement is in evidence. No statement. On Direct Examination. The State has introduced no statement.

The Court: I sustain the objection to anything that happened before the 28th.

The Solicitor: We would like to make a showing in the absence of the Jury. I think we can convince you we are right.

[fol. 461] The Court: All right. The Jury may be excused.

(The Jury retired from the Court Room in charge of the Bailiff.)

The Solicitor: He has testified that he was arrested on July the 28th or 29th. In fact, he knows what he was doing on that date. His present alibi is based on that arrest. That, as I understand it, is his direct testimony. We asked him whether he was taken to Police Headquarters and, I believe, at least, we pinned him to the date. He has testified, according to my understanding, he was never arrested by the police department on a previous occasion. We want an opportunity to check with the police department to find out whether or not he was taken into custody prior to the time he has given.

Lawyer Hall: If he was arrested any time around that period of time it certainly would show on the docket at the City Hall.

The Solicitor: We intend to check it.

Lawyer Hall: The file would be there. The record would be there.

The Court: My understanding is you don't know what the date was, and don't know whether six months or longer, but that it was over ninety days, shown by your testimony?

The Solicitor: We want to find out about it. We haven't had sufficient time to go into it. We want to find out whether or not he was arrested within three months of the 28th. That is what we want. We want to have an opportunity to check the records.

By Lawyer Hall:

Q. Do you know whether you were arrested on the 28th or 29th?

A. I don't know because I cannot say.

The Solicitor: We want to get the further details. We are simply trying to separate the two times.

The Court: At this time we will not go any further into that point. Bring the Jury out.

(The Jury returned to the Court Room.)

By the Assistant Solicitor:

Q. Do you remember you were taken into custody on July 28th or 29th with a Jackie Brown?

[fol. 462] A. I don't know.

Q. Do you remember prior to that you were taken into custody with a Jackie Brown?

A. I don't know.

JOHN GOLTHY, having been duly sworn, was examined and testified as follows:

Direct examination.

By Lawyer Hall:

Q. Will you state your name, please?
A. John Golthy.
Q. Where do you live?
A. A place called Gravel Pit Lane.
Q. What number?
A. 15.
Q. No. 15 Gravel Pit Lane?
A. Yes, sir.
Q. How close is that to the Reeves home?
A. It is next door.
Q. Next door to them?
A. Yes, sir.
Q. What is your occupation?
A. Music. I have an orchestra.
Q. You got an orchestra?
A. Yes, sir.

Q. Did you have that orchestra in July of 1952?
A. Yes, sir.
Q. The orchestra belongs to you?
A. That is right.
Q. In July of 1952 you had an orchestra?
A. That is right.
Q. Is that right?
A. Yes, sir.
Q. And this defendant here, Jeremiah Reeves, Junior, do you know him?
[fol. 463] A. Yes, sir, I know him.
Q. How long have you known him?
A. Quite many years.
Q. Many years?
A. Yes, sir.
Q. Do you know him as a friend, or as a musician, or how?
A. Know him as a friend and musician.
Q. And a neighbor too; is that right?
A. Right.
Q. When you say many years, how many years would that be?
A. Around sixteen, seventeen.
Q. Sixteen or seventeen years?
A. That is right.
Q. On July 27, 1952—that was a Sunday?
A. Right.
Q. Was your orchestra employed?
A. Yes, sir, played at the Sepia Club on Day Street.
Q. Was Jeremiah Reeves playing in the orchestra at that time?
A. He played drums that night and sang that night.
Q. He played the drums and sang that night; is that right?
A. That is right.
Q. Where is that club?
A. On Day Street.
Q. On Day Street?
A. That is west.
Q. Here in the City of Montgomery?
A. Montgomery.
Q. How long was your engagement for that Sunday night?

A. It was from nine until one.

Q. Do you recall at what time you left the Sepia Club that Sunday night?

A. As soon as we quit at one o'clock, and about ten minutes we all left, and just about one-thirty we got home that night.

Q. You got home about one-thirty that night?

A. Yes, sir, because we quit at one o'clock and went home. [fol. 464] Q. Did Jeremiah stay there or did he go right home?

A. He went home direct.

Q. The next day, Monday, did you see this defendant?

A. I saw him coming along up the hill, I would say about ten minutes to ten. He said he was going to school. I didn't see him no more after that.

Q. Didn't see him anymore at all after that?

A. No, sir.

Q. At the time you saw him did he have on a hat?

A. No sir, he didn't have on a hat.

Q. Didn't have on a hat?

A. He always went bareheaded. I never saw him wear a hat. He never wore a hat.

Q. You never saw him wear a hat?

A. I never saw him wear a hat.

Q. You are positive about that?

A. I never saw him wear a hat.

Q. Did you ever know him to wear a mustache?

A. He just had a little bit of something when playing for me. And this mustache now can been seen a little bit.

Q. Did he have any?

A. He didn't have nothing to compare with a mustache.

Q. Did he have any indication of a mustache at that time?

A. Little bit of a streak there. You couldn't see it.

Q. There was some indication of a mustache to you?

A. Yes, sir.

Q. Nothing like what he has now, is that what you were saying?

A. That is right.

Q. Was there enough up there to see it?

A. That is right, if he wasn't shaving it off.

Q. Do you remember how Jeremiah Reeves was dressed on Monday when you saw him?

A. I disremember.

Q. You don't remember?

A. No.

[fol. 465] Q. You are certain he didn't have a hat on?

A. I am sure he didn't have a hat on.

Q. Are you acquainted with his general reputation in the community where he lived?

A. Yes, sir.

Q. What was that reputation, good or bad?

A. Good so far as I know. He always treated me nice.

Q. His repatation generally, among the people who know him. Is that reputation good or bad?

A. It is good. He is kind to every one.

Cross-examination.

By the Solicitor:

Q. Where did you see him? You said you saw him going to school. What do you mean by that? Where did you see him?

A. On the way passed, he had just got past my home.

Q. In other words, that is on the way to town?

A. He said he was going to school. You can go that way to town.

Q. He was on his way then?

A. Yes, sir.

Q. He was going by at that time and said he was going to school?

A. Yes, sir.

Q. Going to what school, did he tell you?

A. Booker Washington.

Q. Booker Washington?

A. Right.

Q. You didn't see him anymore that day?

A. I didn't see him after he was going up the hill.

Q. About ten o'clock that morning?

A. About ten—about ten minutes to ten.

Redirect examination.

By Lawyer Hall:

Q. Did you say anything to him when you saw him, anything in particular?

A. I didn't say anything to him at that time no more than just holler'd to him, that is all.

[fol. 466] Lawyer Hall: The Defendant Rests.

The Court: It is a good time to stop now. We will take a recess until 9 o'clock in the morning.

Gentlemen, the instructions I gave you previously will still stand. You are not permitted to talk to anybody about this case, or permit anybody to talk to you about it. You are not to read the papers, read magazines, listen to the radio or look at television, and not listen to the comments of anyone which might in any way influence you in this case. Now, you are to remain together and stay in the custody of the bailiff. You will be under the same restrictions you were yesterday, and you are to follow those restrictions very strictly.

The Court now stands in recess.
6:20 o'clock P. M.

Court adjourned until Thursday, June 2, 1955, at 9 o'clock A. M.

Thursday, June 2, 1955, 9 o'clock A. M.

Present: The Court, The Jury, The Solicitor and Assistant Solicitor, The Defendant, and his counsel.

STATE'S REBUTTING EVIDENCE

E. O. RYALS, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the Jury, please.

[fol. 467] A. Edward O. Ryals.

Q. What was your occupation or profession on August 30, 1951?

A. I was Lieutenant of Detectives, Montgomery Police Department.

Q. For the City of Montgomery?

A. Yes, sir.

Q. I will ask you this question. On that day, which is August 30th, 1951, was this defendant, Jeremiah Reeves, arrested by the Montgomery Police Department?

A. Yes, sir.

Lawyer Billingsley: We are going to offer an objection to that and like to ask that the Jury be excused until we have the chance to put this witness on voir dire.

The Court: All right. The Jury may retire.

(The Jury left the Court Room in charge of the bailiff)

By Lawyer Billingsley:

Q. You say your name is Lieutenant Ryals?

The Court: I thought you had an objection. What do you want to show?

Lawyer Billingsley: We want to call him on his voir dire.

The Court: For what purpose?

Lawyer Billingsley: What ever he is going to testify, to see that the proper foundation would be laid.

The Solicitor: That comes on an objection to my question.

The Court: You can ask him what Mr. Thetford intends to prove and I can rule on that. You have a right to Cross Examine him on anything he testifies.

Lawyer Billingsley: We want to know what the Solicitor intends to show.

The Solicitor: The State expects to show by this witness that Jeremiah Reeves was arrested on August 30th, 1951: that he was held for a short time, no charge was placed against him, and he was released.

Lawyer Hall: He was held for a short time?

[fol. 468] The Solicitor: He was held for a short time, and no charge was placed against him, and he was released. I don't intend to show what he was suspected of or what he was charged with. I am not going to ask him anything about that. I am simply placing the time he was arrested as August 30th, 1951.

Lawyer Hall: The only way you can establish that is by the record.

The Court: For the benefit of counsel, I guess we are getting a little out of line here. He hasn't testified from it yet.

Lawyer Hall: If that is what the Solicitor wants to show, and it is a fact, perhaps we might agree to it, if it is the fact. Is this witness connected with the Police Department now?

The Court: He was formerly a Detective, I understand.

Lawyer Hall: We offer to admit he was arrested on the 30th and held for a short time, if it is a fact. He has no objection to that.

The Court: All right. Bring the Jury back. It has been admitted of record he was arrested on August the 30th, 1951, and held for a short time and released?

The Solicitor: That is approximately what he will testify to.

The Jury returned to the Court Room.

The Court: Let the record show it has been agreed by the parties that the defendant was arrested on August 30, 1951, held for a short time by the City Police Department, and released.

Any further questions of this witness? Have you any Cross Examination of this witness?

Lawyer Hall: No.

The Court: Any further questions now?

The Solicitor: I understand it is admitted by all parties, the defendant, his counsel, and the State, that the defendant was arrested by the City Police on August 30th, 1951, held for a short time and released?

Lawyer Hall: Glad to, if that is the fact.

By the Court:

Q. Is that a fact?

[fol. 469] A. It is a fact.

Q. You know that from your official capacity when you were a Detective with the City Police Department?

A. Yes, sir.

Cross-examination.

By Lawyer Hall:

Q. I will ask this question of you then. How do you know he was arrested on August 30th, 1951?

A. On account of a suspect.

Q. How do you recall that date exactly?

A. From a summary report made in regard to a case we were investigating at that time.

Q. What do you mean by a summary report? Is that what it is? (Indicating)

A. It was an original duplicate that was made.

Q. That is the only way you know, you don't know any other way?

A. Yes, I made up this.

Q. You made it up?

A. I copied it from the original duplicate there.

Lawyer Hall: If Your Honor pleases, we would like the record to show that what the witness is referring to seems to be a carbon copy of what purports to be—this is a heading "Summary Offense Report, Police Department, Montgomery, Alabama."

The Court: All right.

Lawyer Hall: It is not signed, it has no markings to show that it was filed anywhere, and I believe Mr. Ryals said——

By Lawyer Hall:

Q. You actually made that from this carbon copy? (Indicating)

A. Yes.

Q. Let me ask you, where did you get this carbon copy?

A. I made that copy.

Q. Where did you get it?

A. From the Solicitor's office, from the file.

Q. It was in the Solicitor's office?

A. Yes, sir.

[fol. 470] Q. You didn't have it in your possession?

A. No, I didn't have it in my possession, it came from the file.

Q. In 1951 you were a member of the Montgomery Police Department?

A. Yes.

Q. You are not now employed by the Montgomery Police Department?

A. No, I am not.

Q. Assuming that this is a copy of the files of the record of that arrest, could you say whether or not there is an original?

A. There is an original duplicate.

Q. Where is the original duplicate?

A. It is in the Police files.

Q. In the Police files?

A. Yes, sir.

Q. And you are no longer connected with the Montgomery Police Department?

A. No.

Lawyer Hall: We are going to object to this witness' testimony.

The Court: You could argue that to the Jury, the weight to be given the testimony, and overrule your objection.

Lawyer Hall: We ask for an exception.

The Court: Exception granted for the defendant.

Redirect examination:

By the Solicitor:

Q. The summary, are police reports similar to this one you have testified from, two originals are made; is that true?

A. Yes, sir.

Q. One original retained in the police files and the other original is ordinarily sent to the Solicitor's office?

A. That is correct,

Lawyer Hall: I object to that testimony on the ground this witness testified from information obtained by looking at a copy obtained from the Solicitor's office, not the original copy. The original record is available to the State, it would be the best evidence, and that the person in whose [fol. 471] custody the original record is at this moment is available to the State and could be produced in this Court Room.

The Court: That report hasn't been introduced in evidence and the witness has simply used it to refresh his recollection when testifying. It is a matter that goes to the weight and credibility to be given the testimony of this

witness. You can argue that to the Jury, and your objection is overruled.

Lawyer Hall: We ask for an exception.

The Court: Exception granted the defendant.

JOHN S. BALINT, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the Jury, please?
A. John S. Balint.
Q. What is your occupation?
A. Police Patrolman.
Q. For whom?
A. City of Montgomery.
Q. Was that your occupation on June 30th, 1952?
A. It was.
Q. On June 30th, 1952, did you arrest this defendant, Jeremiah Reeves?
A. I did.
Q. Where did you arrest him?
A. Seven hundred block of Hill Street.
Q. Where ultimately did you take him?
A. Put him in the police patrol car and carried him to Police Headquarters.
Q. That is on June 30th, 1952?
A. Yes, sir.

Cross-examination.

By Lawyer Hall:

Q. How can you be sure of the date of that arrest?
A. Well, you mean why I arrested him?
[fol. 472] The Court: How do you remember the date?

By Lawyer Hall:

Q. How are you so sure of the date?
A. I had some notes I looked at before.

Q. You don't have your notes with you?

A. No, sir.

Q. You had notes before you came to Court?

A. I had checked on it at Police Headquarters.

Q. Did you check with the Solicitor here?

A. I did not.

Q. Is there a record of the arrest in Police Headquarters?

A. Supposed to be, as far as I know.

Q. You checked with Police Headquarters to ascertain whether or not?

A. Yes, it is there at City Hall.

Q. You checked at City Hall and there is a record there of that arrest?

A. Yes, sir.

Q. You didn't bring that record with you?

A. I did not.

Lawyer Hall: We are going to object to this testimony. The Witness testifies he took some notes, and he has just testified from those notes and records, and those notes and records should be made available to this defendant. And anything he testifies to which he doesn't know of his own knowledge, and only with the help of the notes and records, we move to be stricken from the record and the Jury be instructed to ignore it.

By the Court:

Q. Do you remember the circumstances of your own knowledge?

A. I remember some of the circumstances of it; I don't remember all of them, no, sir.

Q. You refreshed your recollection from the official records at the City Police Department?

A. Yes, sir.

Q. When did you do that?

A. That is this past Sunday night.

[fol. 473] The Court: Overruled. I think it just goes to the credibility of the witness rather than his evidence at this time. That would be for the Jury, and whether or not he doesn't know goes to his credibility, and you can argue that to the Jury. I overrule your objection.

By Lawyer Hall:

Q. How long have you been with the Montgomery Police Department?

A. Approximately three and one half years.

Q. When were you first employed?

A. January 1, 1952.

Q. On June 30th, 1952, you had been with the Police Department six months; is that correct?

A. That is right.

Q. As I understand it, you consulted the record and the notes. Have you some personal notes which you consulted to refresh your recollection?

A. No, I haven't.

Q. Whose notes did you consult?

A. Just a report made up by the Police Department of several statements.

Q. Who made that report up?

A. Detective Sheriff.

Q. Beg pardon?

A. Detective Sheriff.

Q. And those notes are in the Police Department over here?

A. That is right.

Q. And you didn't consult those notes before Sunday night?

A. That is correct.

Q. You are positive the date was June 30th?

A. I am.

Q. But you couldn't be positive yourself those notes are right?

A. Not necessarily.

Q. Is that true?

A. No, I couldn't.

Q. The Solicitor didn't tell you the date?

[fol. 474] A. He didn't.

Q. Could you not have brought those notes to this Court Room with you?

A. They were brought here by another witness but he has done been dismissed.

Q. They were brought here by another witness?

A. Yes, sir.

Q. He has the notes?

A. He had the notes but he has done been dismissed.

Q. Are these official arrest sheets? Is that one of the official arrest sheets?

A. It is not an arrest sheet. It is a standard report that we use. Each officer is required to make this up, or a group of officers ran three or four together.

Q. Do you make notes about each arrest, or each pick up you make where no charges are placed?

A. No, not all of them.

Q. But some of them?

A. Some of them.

Q. Where you don't press charges against a man after you pick him up you don't make out any official arrest sheets, or any official record, do you?

A. If he is arrested he is booked at the City Hall. What they do down there, I don't know.

Q. If he is arrested?

A. That is right.

Q. And do you make out any official notes?

A. None whatsoever.

Q. Unless you place charges against a man?

A. That is right.

Q. You don't make any notes at all?

A. I do not.

Q. Concerning this alleged arrest of Reeves, this defendant, on June 30th, 1951, or 1952—June 30th, 1952—you yourself didn't place any charges against him, did you?

[fol. 475] A. I did not.

Q. So you didn't make up any official sheet, did you?

A. My name would be on that sheet as one of the arresting officers.

Q. Did you make out a sheet?

A. No.

Q. Who made out such a sheet?

A. Detective Sheriff.

Q. He made out such a sheet?

A. He did.

Q. No charge was placed against this man at that time?

A. Not by me.

Q. Were any placed against him by anyone?

A. That I couldn't answer. I don't know.

Lawyer Hall: We want to object to this evidence again on the ground this witness has known that he is not ever able to say definitely what happened on June 30th, 1952, except for some alleged notes which are not in this Court Room, and which this defendant has no way of seeing and examining, and which this jury has no way of seeing or examining. On the further ground, we don't know, nor does this Jury, just exactly how the Montgomery City Police Department handles these separate situations. This witness testifies ordinarily when a man is picked up and no charges placed against him no records are made. And we would like to know what notes were made in this instance, if any.

The Court: You have a right to fully examine him. I think your objection goes to the credibility of the witness, and I overrule your objection.

Lawyer Hall: We ask for an exception.

The Court: You may have an exception.

Redirect examination.

By the Solicitor:

Q. When you arrested this defendant on June 30th, 1952, did he have a mustache?

A. He did not.

Q. Sure of that?

[fol. 476] A. I am positive.

Recross-examination.

By Lawyer Hall:

Q. Let me ask you this. How are you so sure?

A. I am.

Q. How?

A. I remember his face.

Q. You remember the faces of every body you arrested in 1952?

A. Most of them I do.

Q. How many persons have you arrested since you have been a policeman?

A. That would be hard to say. I don't know.

Q. In your best judgment?

A. I couldn't truthfully answer that question.

Q. How many persons did you arrest the first six months you were a police officer?

A. Not over fifty.

Q. You remember each one of those fifty?

A. No.

Q. Do you remember half of them?

A. If I would see them again I might.

Q. And sitting there on the stand could you name any of them?

A. I couldn't name any, no.

Q. Do you remember how many were white and how many colored?

A. No, I don't.

Q. How many were short or how many were tall?

A. I don't know.

Q. Do you know how many had a mustache?

A. I don't know that either.

Q. How many of them wore a hat too?

A. I don't know.

Q. And six months after you all became a police officer you testify he didn't have a mustache; you are positive about that?

A. I am.

Q. Did you know for a fact he didn't or did have a mustache is an issue in this cause?

[fol. 477] A. I did not.

Q. And that is the determining factor of the identity of this man as having been the alleged attacker of the prosecuting witness—did you know that?

A. Repeat that question.

Q. That whether or not he had a mustache may be the determining factor in his identity as the attacker of the prosecuting witness, Mrs. Crowder—did you know that to be a fact?

A. No, I didn't.

Q. You sat in this Court Room during this trial at all?

A. I have not.

Q. Have you discussed this matter with the Solicitor?

A. No.

Q. Not at all?

A. Just a few questions he asked me.

Q. Did he ask you whether or not you could testify to certain matters?

A. He asked me what I knew about him, if I knew him.

Q. He asked you if you knew him?

A. Yes, sir.

Q. He asked you if you remembered him?

A. That is right.

Q. He asked you whether or not he had a mustache before you went on the stand?

A. He did.

Q. Did he suggest to you he didn't have one?

A. No, he didn't.

Q. Do you remember anybody you arrested last month, everybody you arrested last month?

A. I would say some of them I can.

Q. Most of them?

A. Yes, sir.

Q. Can you name them for us?

A. James Crews.

Q. I didn't ask you who. Could you name them?

A. I could name most of them, yes.

[fol. 478] Q. Could you describe them for us and tell us whether or not they had a mustache, and whether or not they wore a hat, and whether or not they were short or tall?

A. Most of them I could, I believe.

Q. You could name all of them though?

A. Not all of them.

Q. You know the officers in the Montgomery Police Department?

A. I do.

Q. How many are there?

A. My best knowledge, about one hundred and sixty-seven.

Q. Can you describe them, all of those officers?

A. Roughly, I could.

Q. But specifically you couldn't?

A. I will put it this way. Most I could identify by seeing them around, but some of the newer ones who just came here, I couldn't.

W. T. SHERIFF, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name to the Jury, please.
A. W. T. Sheriff.
Q. Your name, you say, is what?
A. W. T. Sheriff.
Q. What is your occupation?
A. City Detective, Montgomery.
Q. Was that your occupation on June 30th, 1952?
A. Yes, sir.
Q. On that date did you see this defendant, Jeremiah Reeves, Junior?
A. Yes, sir.
Q. Where did you see him?
A. I first saw him on West Jeff Davis Avenue.
Q. About what time?
A. Must have been between five and five-thirty in the morning.
Q. Was he under arrest at that time?
[fol. 479] A. Yes, sir, he was.
Q. Did you talk to him in either the City Jail or at the Police Department?
A. Yes, sir, I did.
Q. You did?
A. Yes, sir.
Q. Were any charges placed against him?
A. Yes, sir.
Q. Did you take any form of written statement from him?
A. Yes, sir.

Lawyer Hall: We are going to object to——

The Solicitor: He testified on Direct Examination he gave no written statement to anybody at that time.

The Court: Ask him if he did. You cannot go into the details of the statement.

Lawyer Hall: I see no purpose at all in bringing in the matter of a written statement. It calls for a conclusion of the witness and all that sort of thing.

The Court: It is available to you.

Lawyer Hall: We don't want it.

The Court: What is the basis of your objection?

Lawyer Hall: The State has put its case in, no statement has been introduced into evidence, a statement has been made to this Jury—I don't know what the statement purports to show—the only thing I am objecting to is the fact you have no right to go into the matter of a statement at all, or any charges at all other than the fact—we make no objection that this witness answered that charges were placed against him—but any testimony to that affect is incompetent and immaterial and decidedly beyond the bounds of any examination, certainly on rebuttal.

The Court: I am going to limit this witness to whether or not he saw this defendant and arrested him. That is the ruling of the Court.

The Solicitor: If the Court please, the defendant himself testified on Direct Examination that he was arrested on [fol. 480] July 28th, he was arrested two times in his life, once before July 28th and once on July 28th. The State now in rebuttal has shown he was arrested in August of 1951 and on June 30th, 1952. The defendant further testified that at no time did he ever make any statement. We are not offering any statement, we are not trying to show what is in that statement. This simply is rebuttal. He testified he made no statement, and testified no charges were placed against him. I am not trying to show what the charges were, simply to show he did make a written statement and charges were placed against him. That is all I want to show.

Lawyer Hall: I don't see why this witness should repeat his evidence that he has given.

The Court: The Court will allow no further examination on any statement of this defendant. The Court has ruled and adheres to his ruling.

By the Solicitor:

Q. Did you talk to this defendant on June 30th, 1952?

A. Yes, sir.

Q. Did he have a mustache at that time?

A. No, sir.

Cross-examination.

By Lawyer Hall:

Q. Are you presently employed by the City of Montgomery as Police Detective?

A. Yes, sir.

Q. How long have you been so employed?

A. In my eighth year.

Q. What date was this you say you arrested this defendant, Jeremiah Reeves?

A. I didn't make the arrest.

Q. You didn't?

A. No.

Q. What date was it you talked with him?

A. When he came back.

Q. Do you know what date he was arrested on?

[fol. 451] A. Yes.

Q. How do you know?

A. I remember the circumstances of the case.

Q. How can you remember the date exactly?

A. Well, I have just a recollecton of it, just like I have of some other cases.

Q. On June 30th, 1952?

A. That is right.

Q. How many years ago was that?

A. About three years ago, almost.

Q. Three years except one month. You remember exactly the date? Do you recall what day of the week it was?

A. No, I don't believe I do.

Q. But you remember the calendar date?

A. Yes.

Q. And you remember that because you had some other arrests that day?

A. I don't know whether I did, or not. I remember it. I probably had.

Q. How do you remember?

A. From my memory.

Q. You have no other way of recalling the date but from your memory, your recollection or your memory?

A. One thing at that time, three cases were cleared with his arrest.

Q. Were there some other cases cleared on that date by the Police Department of Montgomery?

A. I don't know about that.

Q. How many other arrests did you make on that day?

A. I don't believe I made any arrests that day.

Q. Are you positive you didn't?

A. I wouldn't be positive, but I don't believe that I did.

Q. But you are positive that you talked to him on that day?

A. Yes.

Q. But you are not positive who else was arrested on that day?

A. No.

Q. Do you know who was arrested the next day?

[fol. 482] A. No.

Q. Do you know whether the next day was Sunday, or not?

A. No.

Q. Do you know who was arrested the day before that?

A. No.

Q. Have you talked about this to the Solicitor?

A. I have discussed it with the Solicitor.

Q. Did he show you his notes?

A. I don't know whether he showed me his notes, or not, because I don't know what his notes are.

Q. He might have shown you his notes?

A. I don't believe I remember seeing anything that the Solicitor may have had.

Q. Did you testify in this case previously when it was tried in this Court Room in 1952?

A. No.

Q. You didn't testify at that time at all, did you?

A. No.

Q. The only way you know Jeremiah Reeves, this defendant, is by virtue of the fact he was arrested and that he was held in this cause; you didn't know him before that time, did you, as a person?

A. Before that time?

Q. Before the arrest that you mentioned?

A. I am not sure about that.

Q. In your best judgment you didn't, did you?

A. I believe that I did.

Q. You believe that you did; could you state positively that you did?

A. No.

Q. So that you only know him because of the fact that he was arrested, because of the fact he has been tried twice in this cause, and because of the wide newspaper publicity given him; is that true?

A. Repeat that question.

Q. The only way you know Jeremiah Reeves is because of the arrest and trial in this cause, the two times he has been tried, and the wide publicity given this case both [fol. 483] previously and now, that is the only way you know this defendant?

A. No.

Q. In your best judgment?

A. No.

Q. And the fact you arrested him sometime in 1952, or that he was arrested in 1952?

A. I knew him before this particular case was brought to trial.

Q. You did?

A. Yes.

Q. Tell me this. You said you didn't arrest him at the time you spoke of?

A. That is right.

Q. Did you make out the arrest sheet?

A. I believe I booked him.

Q. What do you mean when you say book?

A. Well, in front of the Sergeant and formally charged him.

Q. And he was formally charged—when this is done does he swear out a warrant?

A. I don't know about that.

Q. What is the procedure in the Police Department on an arrest?

A. What part of an arrest?

Q. When a man is brought in and a warrant hasn't previously been sworn out, when you come in, as you say, and take him before the Sergeant and the Sergeant books him, what happens then, is a warrant sworn out at all?

A. Just depends.

Q. Usually? I just want to get the usual procedure; I

am not familiar with the Montgomery Police Department.

A. I don't know the procedure, or enough about the procedure; I don't know what procedure he goes through.

Q. You are a Detective?

A. That is right.

Q. And have been for eight years?

A. That is right.

Q. Now a Detective on the Police Force of the City of Montgomery?

[fol. 484] A. That is my job, yes.

Q. You work for the Department?

A. Yes.

Q. You were at one time a Patrolman?

A. Yes.

Q. You were promoted from Patrolman to Detective?

A. That is correct.

Q. You don't know what the Sergeant does when a Policeman brings a man in to face him?

A. I don't know what procedure he goes through.

Q. When you book him do you put his name on a docket, or put it in an arrest book, or what is it?

A. Well, it is changed there at this time. At one time they used a docket.

Q. At the time that this man was arrested which you have testified to what were they using?

A. I couldn't be sure.

Q. You don't know?

A. No.

Q. But you know he was released?

A. Yes, I know he was released.

Q. Do you recall all the men you arrested in 1952?

A. No.

Q. Do you recall anyone you arrest in June, 1952, whose arrest you were instrumental in procuring and connected with?

A. No.

Q. Could you tell this Court how many other persons you arrested on June 30th, 1952, were colored?

A. I don't know whether I made any arrests, or not, on that day.

Q. You wouldn't say positively that you didn't, would you?

A. That I did, or didn't.

Q. That you did or didn't either, would you say positively?

A. No, I wouldn't.

Q. You don't know whether you arrested six colored people that day, or one?

[fol. 485] A. I am quite sure it wasn't six.

Q. But you don't know, do you?

A. I couldn't swear to it.

Redirect examination.

By the Solicitor:

Q. Is this a photostat original of a police report made by the City Police Department of Montgomery, Alabama? (Indicating)

A. Yes, it is.

Q. Did you make this?

A. Yes, sir.

Q. Now, after refreshing your recollection with that police report you say is yours, will you now tell the Jury what day Jeremiah Reeves, Junior was arrested and you questioned him as you have explained here?

A. On a Monday morning.

Q. What date?

A. June 30th, 1952.

Lawyer Hall: I don't think we have any questions.

Frank E. Frymire, having been duly sworn, was examined and testified as follows:

Direct examination.

By the Solicitor:

Q. State your name, please.

A. Frank E. Frymire.

Q. What is your occupation?

A. Policeman of the City.

Q. You say you are an employee of the Montgomery Police Department?

A. Yes, sir.
Q. Were you so employed on June 30th, 1952?
A. Yes, sir.
Q. What was the nature of your work?
A. Turnkey of the City Jail.
Q. Did you, as part of your duties as turnkey of the City Jail, fingerprint people?
A. Yes, sir.
[fol. 486] Q. You actually took prints?
A. Yes, sir.
Q. I will ask you, refreshing your recollection with this document here, did you as part of your official duties on June 30th, 1952, fingerprint Jeremiah Reeves, Junior?
A. Yes, sir.
Q. Where did you fingerprint him?
A. City Jail Fingerprint Department, down there in the room.
Q. Do you write a description of a defendant when you fingerprint him?
A. Yes, sir.
Q. As part of your official record?
A. Yes, sir.
Q. Did that record indicate he did or didn't have a mustache?
A. Oh, yes, sir. No mustache whatsoever.
Q. No mustache whatsoever?
A. That is right.

Cross-examination.

By Lawyer Hall:

Q. I didn't quite get your name.
A. Frymire.

Lawyer Hall: Has this been offered?
The Solicitor: No.
The Court: He said it was an official document. The record doesn't show what it is.
Lawyer Hall: We would like for the record to show what this witness has been looking at and testifying from purports to be a fingerprint record, Jeremiah Reeves, Junior, negro, male, and it shows on the back the date 6-30-52.

Now, the witness testified that this record showed no mustache. We would like to show and like to note that the description here is given as a negro male; date of birth, August 8, 1935; age, 16; height, 5 feet 6 inches; weight, 130 pounds; complexion, medium brown; hair, black; eyes, brown; small build; scars and marks, none; we find nothing here that refers to a mustache, nothing at all in this record. [fol. 487] The only things we find here is the fact there were no scars or marks.

By Lawyer Hall:

Q. Now, sir, do you recall the defendant here at the time he was in your custody at the City Jail, do you remember him yourself?

A. Jeremiah?

Q. Yes.

A. Yes.

Q. You remember him at that time?

A. Yes.

Q. Personally?

A. Oh, yes.

Q. You have an independent recollection of him at that time?

A. Yes, sir.

Redirect examination

By the Solicitor:

Q. In filling out one of these cards if a man had a mustache you would put it on that card?

A. We put every mark of a man which is noticeable.

Recross-examination.

By Lawyer Hall:

Q. Is a mustache marked?

A. If he had a mustache. The reason it was not put down there was because he didn't have a mustache at all.

Q. Would you put it on that card?

A. Yes, sir. Where it says scars or marks, birth mark and mustache, cuts, bruises, any type of scar.

Q. Would a mustache be considered a scar?

A. It wouldn't be considered a scar.

Q. If he had a mustache would you note it on here as a scar or mark?

A. Wouldn't mark it as a scar, mark it as a mustache.

Q. Do you know whether or not Jeremiah has a mustache today?

A. I know he didn't have at the time I printed him.

Q. You swear to that, do you?

A. That is right.

Q. Do you know whether he had any marks about his body?

[fol. 488] A. Not about the body. We don't strip them down and check the body. Check the face and arms and hands in case they have a birth mark or anything.

Q. Can you see the defendant now?

A. Sure.

Q. See that fog mark over the left eye?

A. I see that from here.

Q. See that mark there? (Indicating)

A. Yes. He didn't have it when he was down there, not in 1952.

Q. Can you see this mark there on the edge of his head? (Indicating)

A. I can see it.

Q. In other words, that looks to you like a new mark?

A. Looks like a new mark to me.

Q. Your records show no marks?

A. No marks. He had none.

Q. No marks at all?

A. No marks. He was as slick as a mole.

MABEL ANN CROWDER, recalled.

Direct examination.

By the Solicitor:

Q. This is Mrs. Mabel Ann Crowder?

A. Yes.

Q. You testified yesterday in this case?

A. Yes, sir.

Q. You testified as to an assault and rape on July 28th, 1952?

A. Yes, sir.

Q. Let me ask you this. At that time, at the time you saw this man in your house, were your windows up or down?

A. Down.

Q. I will ask you to explain to the Jury why they were down.

A. We had an air conditioning system built in with the furnace which had a fan built in it and kept the house cooler with the windows down.

Q. Your windows were actually down at the time of the assault?

A. Yes.

[fol. 489]. Q. I will ask you this. When you were carried to the Maxwell Air Force Base Hospital do you remember the names of the doctors who treated or examined you?

A. Dr. Kojac and Dr. Zarling.

Q. They were the two doctors who treated you and examined you?

A. Yes.

Q. Now, I will ask you this.

Lawyer Hall: If Your Honor please——

The Solicitor: I haven't asked a question yet.

Lawyer Hall: We are not objecting to the question you are about to ask; we are objecting to the questions you have asked. We want to direct this to the Court's attention. We assume the State at this time is rebutting the evidence the defendant has put in.

The Court: They will have to be limited to that. An objection to any question not in rebuttal will be sustained by the Court.

Lawyer Hall: What we mean, any evidence at all who treated the witness, or didn't treat the witness, as to the doctors out there, that is a question which has no place at this particular time at this trial. We didn't object to it, don't want to object to it, but we would like the Court to instruct the State to limit what it has to rebut to the defendant's evidence.

The Court: There is no question for the Court to pass

on at this time. If it isn't in rebuttal you have a right to object to it and the Court will pass on it at that time.

By the Solicitor:

Q. I ask you if this defendant did, or did not, have a mustache on July 28th, 1952?

A. He did not.

Q. Your answer is what?

A. He did not.

Q. You realize the gravity of the crime for which he is charged?

A. Yes.

Q. Knowing that, do you have any mental reservation whatsoever as to this being the man who raped you?

[fol. 490] Lawyer Hall: We want to object to this question and the answer on the ground it is prejudicial, incompetent, immaterial and irrelevant.

The Court: I sustain the objection in the form in which it was asked.

By the Solicitor:

Q. Do you positively identify this man as the man who raped you?

A. Yes.

Lawyer Hall: We want to object to the question and the answer on the ground it is purely repetition of what this witness testified on Direct Examination.

The Court: I sustain the objection. That question was asked on Direct Examination and answered, and it is not in rebuttal, and I don't see the need of going over it again.

Cross-examination.

By Lawyer Hall:

Q. I believe you were asked about your windows being closed. I believe you said the front door was open with the screen latched?

A. Yes, sir.

Q. Your bed room was in front of the house?

A. Yes.

Q. The very first room in front?

A. Yes.

Q. Near the street?

A. Yes.

Q. Were your shades rolled up?

A. No. We had venetian blinds and they were closed.

Q. Had the lights on in the bed room?

A. I don't think so.

Q. Or light from the sun, or was it dark?

A. No, it wasn't dark. It wasn't as bright as daylight is, but it was light enough for me to dress there.

Lawyer Hall: We were just trying to check on the room. That is all we have.

[fol. 491] The Solicitor: The State Rests.

Lawyer Hall: In sur-rebuttal we have some evidence we want to introduce. We have at least two witneses. We would like to issue a subpoena for a witness and some pictures here in Montgomery. We just found out about it.

The Court: Your request comes rather late. I don't know whether we could get the witness now, or not.

Lawyer Hall: It is difficult. We propose to show a picture of Jeremiah Reeves taken early in 1952 before he was arrested, for the purpose of ascertaining whether or not he did, or did not, wear a mustache that would be possible to see, and that the pictures are here in Montgomery, and the photographer is here, and it is the defendant in the picture. We didn't know of this circumstance previously.

The Court: Do you know the photographer is available?

Lawyer Hall: No, sir, I don't. If we did we would have talked to him. Probably he can be made available. I don't know. We just discovered this picture.

The Court: Is this the picture? (Indicating)

Lawyer Hall: Yes, sir. Jeremiah played the bass drum.

The Solicitor: It doesn't look like him. I will stipulate that is what the defendant says is a picture of him taken early in 1952, and admit it on that basis.

The Court: If you agree to that you withdraw your request to get the witness here?

Lawyer Hall: Yes, sir. We would like this picture marked.

The Court: He didn't stipulate that is the defendant. This picture is introduced in evidence with a stipulation between counsel this is a picture which Jeremiah says was taken in the early part of 1952, saying in that picture he appears on the right hand side looking at the picture, the man with the glasses on—only one man with glasses on—is the one Reeves says is his picture, and the picture is introduced in evidence with that stipulation by the Solicitor. [fol. 492] and counsel for the defendant. The picture may be identified.

(Marked "Defendant's Exhibit 13, 6-2-1955, WHL")

Lawyer Hall: We have a witness sitting in the Court Room.

The Solicitor: I object to any witness sitting in the Court Room testifying.

The Court: A member of the family?

Lawyer Hall: No, I don't know how long she has been sitting here. I won't insist on it. It is simply on the matter of the mustache.

The Court: That would be merely accumulative?

Lawyer Hall: Yes, sir.

DEFENDANT'S SUR-REBUTTING EVIDENCE

CARNELLA REEVES, recalled.

Direct examination.

By Lawyer Hall:

Q. You are Carnella Reeves, you are the same person who testified previously in this trial?

A. That is right.

Q. You are the mother of the defendant, Jeremiah Reeves, Junior?

A. That is right.

Q. I will ask you this. Has Jeremiah Reeves, Junior always worn a mustache for the last several years?

A. Shaved it, but he had it when they arrested him. He has.

Q. Was it very noticeable, could you see it?

A. It was kind of poorly, wasn't heavy like it is now.

Q. He did have a mustache?

A. He did have a mustache.

Q. And at the time they arrested him you say he had a mustache?

A. He had a mustache, little small, not like that, a round one, three years. He tried to shave it round.

Q. Will you look at this defendant, please. See that [fol. 493] seam on the left side of the face in the hair line; see that seam going in the hair line?

A. That is right.

Q. How long has that been there?

A. That has been there for—when he was around the neighborhood about four years old, been there that long, when we were staying on Hall Street.

Q. You see this seam here in the corner of the left eye. Do you know how long that seam has been there?

A. I don't know exactly how long that seam there, but he had it when we live at that place on Hall Street, and got this one right here. (Indicating)

Q. And been there ever since you lived on Hall Street?

A. Ever since we live on Hall Street. One over that eye and the other over this eye. (Indicating)

Q. And one over the right eye?

A. And that one too, both of them, you find there at the same time. (Indicating)

Q. I show you a document identified or marked Defendant's Exhibit 13 and ask you if you can identify that?

A. What was this you say?

Q. What is it. Tell us what it is, what it purports to be, do you know that?

A. A copy of my son's picture.

Q. Is that a picture of Jeremiah Reeves, is one of them supposed to be your son?

A. One of them is Jeremiah.

Q. Of Jeremiah Reeves, Junior, the defendant here on trial for his life?

A. That is him.

Q. This is a picture of Jeremiah Reeves?

A. That is Jeremiah right there. (Indicating)

Q. Turn around and tell the Jury which one is Jeremiah Reeves, Junior.

A. This is Jeremiah Reeves with glasses on. (Indicating)

Q. He is the one that has glasses on?

[fol. 494] A. That is right.

Q. I ask you if you know when that picture was made?

A. I cannot fix the time that picture was made, but when Jeremiah was picked up, and I began to look about and found this picture right here in one of the drawers.

Q. In a drawer at your home?

A. At my home, right here.

Q. You had it at your home?

A. At my home.

Q. Does that picture that you say was Jeremiah indicate that man has a mustache?

A. Yes, sir.

Q. It does?

A. He had some. It wasn't as heavy as this.

Q. Could you identify that mustache in the picture?

A. Yes, sir, he has some little mustache on the face.

Q. I show you a document identified as Defendant's Exhibit 14, and ask you if you can identify this for us?

A. I can.

Q. What is it?

A. This is my son, Jeremiah's, picture.

Q. That is Jeremiah Reeves, Junior's picture?

A. That is right.

Q. Is that right?

A. That is right.

Q. Do you know when that picture was taken?

A. I know when it was taken. In other words, that is the same picture. When they had him in Kilby I just had that picture enlarged.

Q. That is the same picture?

A. That is the same picture cut from that other young man.

Q. This picture, you say, was taken from the other one? Are you certain this is the same picture? One person was standing and this person was sitting.

A. Enlarged that from this right here, because I didn't want the other man in it. (Indicating)

[fol. 495] Q. I see what you mean, it was at your home when Jeremiah was picked up?

A. It was at my home, sure.

The Solicitor: I am objecting to it on the ground this is a copy supposedly; she says this is a copy of a picture of her boy, a copy of a picture that was taken, she wasn't present when the original was taken, she hasn't accounted for the original, this is simply a copy of another picture. I let the other one in. I don't think this should go in at all. She doesn't know who took the original. I let the first picture in for what it is worth. This is accumulative. She says this is another of Jeremiah. The original is already in evidence.

Lawyer Hall: This is a larger picture, the man's features are better indicated.

The Court: I understand her to say this is the same picture as that one there?

Lawyer Hall: That is right

The Court: Is I understood, she says this is a picture taken from that picture, copied by somebody other than the original photographer?

Lawyer Billingsley: No. The one taking that picture there made that picture, and we can show where it was made or who made it.

By Lawyer Hall:

Q. Do you know whether or not this pictufre and this picture—is this the same picture as this picture? (Indicating)

A. Yes, sir.

Q. Do you see Jeremiah in this picture and Jeremiah in this picture?

A. That is right.

Q. You say they are the same picture?

A. That is right.

Q. And this is a copy of this?

A. The same picture, yes, sir. I say it.

The Court: Are you offering it?

Lawyer Hall: Yes, sir.

[fol. 496] The Court: The Court will let it in for what it is worth. Both pictures should be handed to the Jury at the same time since they are supposed to be the same identical picture.

(Picture referred to and offered in evidence marked "Defendant's Exhibit 14, 6-2-1955, WHL")

Lawyer Hall: If Your Honor please, we want the photographer to report when he made or took this picture, if he knows.

The Solicitor: We have already stipulated as to that and the picture is in evidence.

The Court: It has been admitted. Unless you are going to question your own picture.

Lawyer Hall: We are not. We want to definitely establish this to be a picture of Jeremiah Reeves, Junior. However, if it is stipulated we will withdraw the request to call the other witness, and the defense will rest.

The Solicitor: We have already stipulated on that, we made a stipulation.

Lawyer Hall: I withdraw my request for the photographer.

TESTIMONY CLOSED

The Jury retired to the Court Room in charge of the bailiff.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: I have two matters I want to discuss. First I want to know the estimated amount of time defense counsel and the State will require to argue the case.

The Solicitor: I think we can probably conclude in half an hour, but we would prefer to have forty-five minutes to the side.

The Court: I will allow each side forty-five minutes. Let us make it an hour to a side as absolutely fair. That is more than fair, I think, counsel.

[fol. 497] If there are any requested charges, I would like to have them now.

I want to call attention to defense counsel this point. The indictment in this case was tried before, the verdict of the Jury is on the back of this indictment. The Court observes for your benefit you probably prefer that verdict not go out to the Jury. Consequently I have now suggsted for your agreement, and agreement of the defendant himself, an actual copy be made by myself on my own motion of the indictment, and the back of the indictment will show

nothing on it other than the verdict of this Jury. I would like to know whether you agree, or not, to submit to the Jury with the verdict of the last Jury.

Lawyer Hall: One of the pertinent questions all during this trial is the defendant was not reindicted and rearraigned.

The Court: Let us avoid any of those objections now. If this went to the Jury it would in my own mind mess this particular trial. I don't want the defendant to be prejudiced by anything that happened heretofore.

Lawyer Hall: What we would like the record to show is this. We will agree to a photostat of the indictment——

The Court: It is an authentic copy of the indictment.

Lawyer Hall: An authentic copy of the indictment to go to the Jury instead of the original, but by so doing we don't wave our objections to the fact this defendant was not rearraigned and reserved with a copy of this indictment.

The Court: I assure you by this going to the Jury you won't waive any motion or objection heretofore made, nor will you gain anything, or will you lose anything.

Do you understand what I have stated to your lawyer, the original indictment you were tried on when you were convicted in this Court contains the Jury verdict? I have suggested to defense counsel perhaps they would prefer not to have that verdict go to the Jury. Do you, or not; want to agree, instead of this indictment going to the Jury with the verdict on the back, do you want to agree to this copy of the indictment that contains a full copy of the indictment, [fol. 498] a list of witnesses on the back, but eliminate the verdict on the back; do you understand that and do you agree to it?

The Defendant: Whatever my lawyer says.

The Court: Let the record show on advice of counsel the defendant also agrees.

11:03 o'clock A. M.

The Jury returned to the Court Room.

11:04 o'clock A. M.

The Assistant Solicitor presented the State's first closing argument to the jury.

11:18 o'clock A. M.

Lawyer Hall presented the defendant's closing argument to the jury.

11:42 o'clock A. M.

Recess. The Jury retired from the Court Room in charge of the bailiff.

11:53 o'clock A. M.

The Jury returned to the Court Room.

11:54 o'clock A. M.

The Solicitor presented the State's last closing argument to the jury.

(Lawyer Hall, of counsel for defendant, left the Court Room at this point and did not return.)

During the Solicitor's argument:

Lawyer Billingsley: I think that there was no evidence in this case as to scratches being on the arm.

The Solicitor: I ask the jury to look right now.

Lawyer Billingsley: If there was scars, the defendant has been on the stand and they could have shown the jury here the scars.

The Court: It is my understanding there were no scars. You may continue, Solicitor.

[fol. 499] 12:12 o'clock P. M.

The Court: Gentlemen, my charge will take a few minutes and I am going to recess here for exactly five minutes. If you want to retire, smoke and streteh a bit, you may do so.

(The Jury retired from the Court Room in charge of the bailiff.)

12:18 o'clock P. M. Court re-convened.

Present: The Court. The Jury. The Solicitor and Assistant Solicitor. The Defendant and His Counsel, Lawyer Billingsley.

[fol. 500] CHARGE OF THE COURT

James J. Carter, Special Judge

Gentlemen of the Jury: It now becomes my duty as the Judge presiding at this trial to charge you as to the law governing this case. You have been selected to serve on this Jury, and upon you, as citizens of Alabama, selected to sit on this Jury, devolves the important duty to pass upon the main issue which involves the life and liberty of a fellow citizen. I charge you to bring to the discharge of this duty all the wisdom, patience, impartiality and cour-

age that you possess. Give to the evidence in this case your faithful, earnest and impartial consideration, examine it deliberately, cooly, and dispassionately, and let the evidence in this case be the great pole star, in the light of which you are to pursue your quest in your investigation after the truth of the matters submitted for your consideration and decision. Let nothing interfere with your fair judgment, all to the end that under the law and the evidence full and complete justice may be done between the State of Alabama and this defendant.

Now, gentlemen, with reference to your duty as the Jury in this case, and my duty as the Judge presiding in this case, let me say to you that you as a Jury, and I as a Judge, have each a separate and distinct province, within the bounds of which each of us must keep if justice is to be done according to law. It is my duty as Judge at this trial, to rule on points of law, to determine the admissibility of evidence, and to instruct you as to the general law governing this case. As the Judge presiding at the trial, I have no opinion as to the facts, and if I did have, it would be highly improper for me to express an opinion. I have no opinion as to the facts, and I instruct you that you are not to consider in your deliberations any ruling or any statement made by me at any time during the course of the trial while presiding in this trial, as being any indication whatsoever I have an opinion at all as to the facts, for I have none.

In this case, gentlemen of the jury, you, and you alone, are the sole judges of the facts, and the weight and suffi- [fol. 501] ciency of the evidence is for you and you alone. All questions of fact are to be determined by you, and it is not for me as the Judge to give you instructions as to matters of fact. You are to decide this case on the evidence that came to you from the witness stand and nothing else. You, and you alone, will be the judges of the truth, and you are to find the truth. The credibility of the witnesses and the weight to be given their testimony is for you as the triers of fact. You have seen the witnesses on the witness stand, you have heard them testify, you have had an opportunity to observe their demeanor on the stand; you have had an opportunity to observe whether they are willing, unwilling, or too willing witnesses; you may con-

sider their interest in the case, if any, the relationship of the witnesses to the parties involved and whether are willing, as I said, unwilling, or too willing witnesses. From the evidence, and the evidence alone, you are to determine the truth. If you find that a witness testified falsely as to any material fact you may, in your discretion, disregard all the testimony of that witness, or you may accept that which you find to be true and reject that which you find to be false. Certain testimony has been read to you from a previous trial, both by the Solicitor for the State and by the defendant's counsel. You are to consider that evidence, also, just as you consider the evidence of the witnesses who appeared here in person before you.

Now, gentlemen of the Jury, the defendant in this case has testified in his own behalf, and this he had a perfect right to do. You cannot capriciously disregard his testimony any more than that of any other witness. The law is that you must take his testimony and consider it along with all the other testimony in the case, but while you are considering his testimony you may take into consideration the fact that he is the defendant in the case and is interested in the result.

Now, gentlemen, when a defendant is placed on trial charged with the commission of a public offense he is, under the law, presumed to be innocent. This defendant enters this trial with this presumption of innocence in his favor, and it is a fact that is to be considered as evidence and should not be disregarded by the Jury, and this [fol. 502] presumption of innocence remains and abides with the defendant throughout the trial until overthrown by evidence which convinces the Jury of the defendant's guilt beyond a reasonable doubt.

The defendant here is being tried under an indictment charging the offense of rape. The mere fact that the defendant was arrested and accused of the alleged offense, and the further fact that the Grand Jury found an indictment against him therefor, are not facts or circumstances to which the Jury is allowed to look in determining the guilt or innocence of the defendant, nor is the accusation, arrest or indictment circumstances either in law or in fact showing or tending to show that the defendant is guilty of the offense charged. These things are merely the outhor-

ized procedure by which an accused may be put on trial, and are in no sense facts or circumstances from which it may be judged that he is guilty. Gentlemen, the presumption of innocence, evidential in its nature, under all the rules of law, attends the accused throughout the trial, and until the presumption is overcome by the evidence in the case, and until it is shown beyond a reasonable doubt and to a moral certainty that the presumption must fall and that the defendant is guilty.

In this case, the burden of proving that the defendant is guilty as charged in the indictment rests upon the State, and before a conviction can be had in this case the State must satisfy the Jury of the defendant's guilt beyond a reasonable doubt. Unless the the State so satisfies you of the defendant's guilt beyond a reasonable doubt, then the defendant is entitled to an acquittal at your hands. For a verdict of guilty to be returned in this case, the entire Jury shall believe from the evidence, beyond a reasonable doubt and to a moral certainty, that the defendant is guilty as charged in the indictment, to the exclusion of every probability of his innocence, and every reasonable doubt of his guilt, and, if the prosecution has failed to furnish such measure of proof, and to so impress the minds of the Jury of the defendant's guilt, the Jury should find the defendant not guilty.

Now, the phrase "reasonable doubt" is self-explanatory and efforts to define it do not always clarify the terms, but [fol. 503] it may help you some to say that a doubt which would justify an acquittal must be an actual and substantial doubt, not a mere possible doubt. A reasonable doubt is not a mere guess or surmise, and it is not a forced or a captious doubt. If, after considering all the evidence in this case, you have an abiding conviction of the truth of the charge, then you are convinced beyond a reasonable doubt, and it would be your duty to convict the defendant. The reasonable doubt which entitles an accused to an acquittal is not a mere fanciful, vague, conjectural or speculative doubt, but a reasonably substantial doubt, arising from the evidence and remaining after a careful consideration of the testimony, such as reasonable, fairminded and conscientious men would entertain under all the circumstances.

Now, you will observe, gentlemen, that the State is not

required to convince you of the defendant's guilt beyond all doubt, but simply beyond all reasonable doubt and to a moral certainty. Now, moral certainty is that degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

I am going to define what is meant by circumstantial evidence. Circumstantial evidence is the proof of certain facts and circumstances in a given case, from which a Jury may infer other connected facts which usually and reasonably follow, according to the common experience of mankind. Now, the humane provision of the law is, that upon circumstantial evidence there should not be a conviction unless to a moral certainty it excludes every other reasonable hypothesis than that of the guilt of the accused. No matter how strong may be the circumstances, if they can be reconciled with the theory that some other person may have done the act, then the guilt of the accused is not shown by that full measure of proof which the law requires.

Gentlemen of the jury, you have also heard in this case testimony as to the good character of the defendant. The law on that subject is this. Good character, if proved by [fol. 504] the defendant, and taken in connection with all the other evidence, may generate a reasonable doubt which would entitle the defendant to an acquittal, even though without such proof the Jury would convict.

Now, the indictment in this case charges as follows—and I will read it to you—"The Grand Jury of said County charge, that under the findings of this indictment Jeremiah Reeves, Junior, whose name is to the Grand Jury otherwise unknown, forcibly ravished Mrs. Ann Crowder, a woman, against the peace and dignity of the State of Alabama."

Under this indictment the defendant is charged, under our Law, with the offense of rape. Under Section 395 of Title 14 of the Code of Alabama of 1940 it is provided: "Any person who is guilty of the crime of rape, shall, on conviction, be punished, at the discretion of the Jury, by death or imprisonment in the penitentiary for not less than ten years."

Now, rape, gentlemen of the jury, is having unlawful carnal knowledge, that is sexual intercourse—of a woman, forcibly and without her consent. The Law of Alabama is that, "to sustain an indictment for rape, proof of actual penetration is sufficient, when the act is shown to have been committed against the consent of the person on whom the offense was committed.",

Now, force is an indispensable element of the offense of rape. The consent of the female yielded at anytime before the act of penetration relieves the act of its felonious character. The force need not be actual physical force. The force may be actual physical force overcoming the resistance of the woman, but it is sufficient if the force is constructive force such as duress or being put in fear. The offense of rape is complete if the woman is made to yield through fear, and does not consent voluntarily to the act of sexual intercoure. Thus, one who by force and against the consent of the female has sexual intercourse with her is guilty of rape.

Gentlemen, the indictment charging rape also includes the lesser offense of assault with intent to ravish. The law of Alabama provides that any persons who commit an assault on another with intent to ravish, shall, on convic- [fol. 505] tion, be punished by imprisonment in the penitentiary for not less than two nor more than twenty years. Assault with intent to ravish must be a forcible attempt to have sexual intercourse with a female against her consent. The offense of assault with intent to rape includes all elements of rape except the sexual act, and with an intent to have intercourse with a female by force and against her consent. To justify a conviction for assault with intent to rape, the evidence must show acts for assault with intent to rape, the evidence must show acts and conduct on the part of the defendant leaving no reasonable doubt of the accused's intentions to gratify his lustful desire against the consent of the female and regardless of resistance.

An indictment charging rape also includes the lesser offense of assault and assault and battery. The Alabama law provides that "any person who commits an assault, or an assault and battery on another, shall, on conviction, be fined not more than five hundred dollars, and may also be

imprisoned in the County Jail, or sentenced to hard labor for the County, for not more than six months."

Now, an assault is an attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness, with such circumstances as denote at the time an intention to do it, coupled with a present intention to convey such intention into effect. And any touching of another in rudeness or anger is an assault and battery.

Now, gentlemen of the Jury, to that offense in this indictment I have read to you the defendant has interposed two pleas. In other words, he has made two pleas to the indictment. One plea he has entered is a plea of "not guilty," and the other is the special statutory plea of "not guilty by reason of insanity."

The plea of not guilty is what we call a plea of the general issue, and under this plea the burden is upon the State to satisfy the jury by the evidence of the defendant's guilt of the offense charged beyond a reasonable doubt, as I have previously defined that term for you. The State has the burden of proving every element of the crime charged against the defendant, and the law requires that in order to convict, the jury must be satisfied of the defendant's [fol. 506] guilt beyond a reasonable doubt and to a moral certainty.

The plea of not guilty by reason of insanity is a special plea, and the burden of proving this plea is upon the accused, the defendant, who sets up that plea, and under the law he has the burden of proving to the reasonable satisfaction of the jury his defense of insanity. Under our law, the question of the accountability of a person for criminal action can be triable only under a special plea of insanity interposed at the time of the arraignment of the defendant. The defense of insanity must be specially pleaded, and it has been pleaded in this case, because the plea of the general issue *issue* "not guilty" does not put in issue the question of the irresponsibility of the accused by reason of the alleged insanity; and, without this special plea the defendant could not offer evidence of his insanity. The purpose of the statute has been to set apart and separate, as far as possible, the two defenses, "not guilty" and "not guilty by reason of insanity," and to have the proof directed

to each of the two defenses, and the verdict to respond to each of such two defenses.

It has been said by an Alabama Jurist that, reason being the common gift of God to every man, every man is presumed to be sane—that is, of natural and normal mental condition; and, I charge you that under the laws of Alabama every person over the age of fourteen years charged with crime is presumed to be responsible for his acts.

The burden of proving that the defendant is irresponsible is cast upon the accused, and under the law he has the burden of clearly proving to the reasonable satisfaction of the Jury his defense of insanity.

The proper legal rule of responsibility in criminal cases is well settled in Alabama, and one who is so insane as to be incapable of entertaining the criminal intent cannot be guilty of crime or held criminally responsible for his acts. The legal tests by which one's responsibility for crime is judged are now as follows:

1. Where there is no capacity to distinguish between right and wrong, as applied to the particular act, there is [fol. 507] no legal responsibility.

2. Where there is such capacity, a defendant is nevertheless not legally responsible if, by reason of the duress of mental disease, he has so far lost the power to choose between right and wrong as not to avoid doing the act in question, so that his free agency was at the time destroyed; and, at the same time, the alleged crime was so connected with such mental disease as the relation of cause and effect, as to have been the product or off-spring of it solely, these are the tests by which you are to be guided in considering the special plea of "not guilty by reason of insanity."

Insanity to relieve from criminal responsibility must be caused by or result from a disease, lesion or disorder of the brain or mind. Not every transient departure from normal conduct is insanity. For example, anger itself is often said to be a sort of madness, but it is not such insanity as confers legal irresponsibility for crime.

Irresistible impulse generated by wicked propensities will not excuse the violation of law. Depravity is not a disease. High temper, hot blood, and passion are not such mental ailments as will excuse the commission of crime.

Gentlemen of the jury, in this case you have heard evi-

dence concerning alibi. An alibi is defined as this. It is a term used to express that mode of defense to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time. When the defendant attempts to prove an alibi, the burden of proof is upon him to prove it successfully. The burden of proof is on the State to convince the Jury by the evidence beyond a reasonable doubt that the defendant is guilty as charged, and this burden is never discharged until after a consideration of the whole evidence, including the evidence offered as to alibi, and the Jury is so convinced. In order for the evidence as to alibi to be sufficient in law to generate in the minds of the Jury a reasonable doubt of the defendant's guilt, it must be strong and cogent enough to reasonably satisfy the Jury, when taken and considered with all the other evidence, that [fol. 508] the defendant was at some other place and could not have committed the act charged. The great weight of authority supports the well established rule, that the defendant is entitled to an acquittal if the evidence concerning the alibi, together with all the other evidence in the case, raises a reasonable doubt of guilt.

Gentlemen of the Jury, after having considered all the evidence you are not satisfied of the defendant's guilt beyond a reasonable doubt and to a moral certainty, then you should acquit the defendant, and in that event the form of your verdict would be "We, the Jury, find the defendant not guilty."

If you are satisfied from the evidence beyond a reasonable doubt and to a moral certainty that the defendant had sexual intercourse with Mrs. Ann Crowder, forcibly and without her consent, and if the defendant in this case has clearly proved to your reasonable satisfaction his defense of insanity, then it is your duty to render a special verdict that the defendant is not guilty by reason of insanity. In that event the form of your verdict would be, "We, the Jury, find the defendant not guilty by reason of insanity."

In the event the State has convinced you by the evidence beyond a reasonable doubt that the defendant is guilty of rape as charged in the indictment, and the defendant has not proved to your reasonable satisfaction his defense of

insanity, the form of your verdict would be, "We, the Jury, find the defendant guilty as charged and fix his punishment at death," or, "We, the Jury, find the defendant guilty as charged and fix his punishment at (so many) years in the penitentiary," the number of years being not less than ten.

If you are not convinced by the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of rape, but you are convinced from the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of an assault with intent to ravish, and the defendant has not proved to your reasonable satisfaction his defense of insanity, your verict will be in this form, "We, the Jury, find the defendant guilty of assault with intent to ravish." Under that verdict you do not de-
[fol. 509] cide the punishment. That will be entirely for the Court.

If you are not convinced by the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of rape, or an assault with intent to ravish, but you are convinced from the evidence beyond all reasonable doubt and to a moral certainty that the defendant is guilty of an assault or an assault and battery, and the defendant has not proved to your reasonable satisfaction his defense of insanity, your verdict would be, "We, the Jury, find the defendant guilty of an assault (or an assault and battery) and fix his fine at (so many) dollars, not more than $500, or decline to assess a fine." In which event, if the Jury declines to assess a fine, it becomes the Court's duty to impose a hard labor sentence not exceeding six months imprisonment in the County Jail.

Any verdict you reach in this case must be an unanimous verdict, all twelve of you must agree in this verdict. Take the case, deliberate on it in the light of the charge I have given you today. As I told you before, bring to it everything you can in the way of fairness and impartiality, consider it fairly under the evidence coming from that stand as to the offense charged in this indictment, nothing else. Designate one of your number as foreman, and let whatever verdict you render be written on the back of the indictment, and I will ask that it be signed by one of your number as foreman.

I have prepared a number of forms of verdicts in accordance with what I have told you. I will give them to you to take into the room with you, to aid you in writing on the back of the indictment whatever verdict you reach. These are the possible verdicts that may be reached in the case.

Gentlemen of the Jury, take the case, consider it, and arrive at a verdict. As I have told you, it must be an unanimous verdict. Whatever verdict you reach, write it on the back of the indictment and have it signed by one of your number as foreman and return the verdict to the Court.

The defendant satisfied?

Lawyer Billingsley: Yes, sir.

The Court: The State satisfied?

[fol. 510] The Solicitor: The State is satisfied.

The Court: Gentlemen of the Jury, counsel for the defendant has handed me a number of charges in writing. They are not inconsistent with the charge I have just given you and the instructions as to the law, and will be taken by you and considered by you along with the Court's oral charge.

The Court charges the Jury that the defendant enters into this trial with a presumption of innocence, and this is a fact in the case, which must be considered with all the evidence, and should not be disregarded.

I charge you, Gentlemen of the Jury, that you should acquit the defendant if you believe that a person other than the accused was guilty of the crime charged, or if you have a reasonable doubt as to such fact.

I charge you, Gentlemen of the Jury, that the accused in this case is presumed to be innocent until proven guilty beyond a reasonable doubt, and if after considering the evidence there is a reasonable doubt of his guilt, then you cannot find him guilty.

I charge you, Gentlemen of the Jury, that if from the evidence in this case you are satisfied beyond a reasonable doubt that the accused, even though he may have been able to distinguish right from wrong, was so afflicted with a diseased mind that by reason of the duress of such mental disease, he was moved by an irresistible impulse to commit the acts charged, then you must find him not guilty by reason of insanity.

The Court charges the Jury that good character itself is

part of the evidence in this case, and if the Jury upon a consideration of all the evidence have a reasonable doubt growing out of any part of the evidence, the Jury will give the defendant the benefit of such doubt and acquit him.

I charge you, gentlemen of the Jury, that a reasonable doubt may be defined as a doubt which leaves the minds of the jurors waiving, unsettled, and unable to come to a conclusion as to the truth, or to a conclusion satisfactory to them, and if after hearing the evidence in this case there [fol. 511] is such a doubt in your minds, you cannot find the defendant guilty.

I charge you, gentlemen of the Jury, that reasonable doubt exists where a juror hesitates between two conclusions, and then, after considering the evidence from all angles, is reluctant to conclude which of two conclusions is correct.

I charge you, gentlemen of the Jury, that you cannot find the accused guilty unless you believe him guilty beyond a reasonable doubt. A mere suspicion that he may be guilty is not enough to justify conviction.

I charge you, gentlemen of the Jury, if upon considering all of the evidence in this case, you have a reasonable doubt of the defendant's guilt arising out of any part of the evidence, it is your duty to find him not guilty.

The Court charges the Jury that the burden is on the State to convince you of the defendant's guilt to the exclusion of every reasonable doubt, and by evidence that overcomes the presumption of fact, that the law surrounds the defendant with, he is innocent of crime.

I charge you, gentlemen of the Jury, that if from the evidence in this case you are satisfied beyond a reasonable doubt that the defendant was afflicted with a diseased mind to the extent that (one) he did not know right from wrong as applied to the particular act in question, or (two) if he did have such a knowledge, he, nevertheless, by reason of the duress of such mental disease had so far lost power to select the right and to avoid the act in question as his free agency was at the time destroyed, and (three) that, at the same time the crime was so connected with such mental disease in relation of a cause and effect, as to have been the product of it solely, then you must find the defendant not guilty by reason of insanity.

The Court charges the Jury that if the evidence, or any part thereof, after a consideration of the whole of such evidence, generates well founded doubt of defendant's guilt, the Jury must acquit him.

The Court charges the Jury that they must find the de- [fol. 512] fendant not guilty if the conduct of the defendant upon a reasonable hypothesis is consistent with his innocence.

The Court charges the Jury that before they can convict the defendant the evidence must be so strong as to convince any juror his guilt beyond a reasonable doubt; and if, after considering all of the evidence, a single juror has a reasonable doubt of the defendant's guilt, arising out of any part of the evidence, then they cannot convict him.

The Court charges the Jury that the only foundation for a verdict of guilty in this case is that the entire jury shall believe from the evidence beyond a reasonable doubt and to a moral certainty, that the defendant is guilty as charged in the indictment, to the exclusion of every probability of his innocence, and every reasonable doubt of his guilt, and if the prosecution has failed to furnish such measure of proof, and to so impress the minds of the jury of his guilt, they should find him not guilty.

I charge you, gentlemen of the Jury, that the legal test of insanity in Alabama, which will justify a verdict of not guilty by reason of insanity, is that at the time of the commission of the offenses the accused was afflicted with a diseased mind to the extent that (one) that he did not know right from wrong at the time of the particular act in question (two) if he did have such knowledge, he, nevertheless, by reason of the duress of such mental disease had so far lost the power to select the right and to avoid doing the act in question as his free agency was at the time destroyed, and (three) that, at the same time, the crime was so connected with such mental disease and the relation of cause and effect as to have been the product of it solely.

I charge you, gentlemen of the Jury, that a reasonable doubt as to the guilt of the accused will exist, after the entire evidence has been compared and considered by you, you do not have an abiding conviction, or an abiding conviction to a moral certainty, of the truth of the charge

against the accused, and if such reasonable doubt does exist, you cannot find the accused guilty.

The burden is upon the State and it is the duty of the [fol. 513] State to show beyond a reasonable doubt and to the exclusion of every reasonable hypothesis, every circumstance necessary to show that the defendant is guilty, and unless the State has done that in this case, it is your duty, gentlemen of the Jury, to render a verdict of not guilty.

The Court charges the Jury that if the Jury would not be willing to act on the evidence in this case, as if it were in relation to matters of the most solemn important to their own interest, they must acquit the defndant.

The Court charges the Jury that under your oaths you are bound to consider the evidence as to the character of the defendant along with all the other evidence in this case, and the character evidence alone, may, in your sound judgment, be sufficient to generate a reasonable doubt of the defendant's guilt of either charge presented in the indictment in this case. and if such reasonable doubt has been generated by the evidence after considering it all, you should give the defendant the benefit of that doubt and acquit the defendant.

The Court charges the Jury that if, after considering all the evidence in this case you have a reasonable doubt of the guilt of the defendant of the charges presented in the indictment in this case, you should acquit the defendant.

The Court charges the Jury that if in considering all of the evidence in this cause, that tending to show guilt together with that tending to show innocence, there should spring up in the minds of the Jury from any part of the evidence a probability of the innocence of the defendant, the Jury should acquit.

The Court charges the Jury that unless each member of the Jury is convinced beyond a reasonable doubt, from the evidence in the case of the guilt of the defendant, then you should not convict the defendant.

The Court charges the Jury that the legal presumption of innocence is to be regarded by the Jury in every case as a matter of evidence to the benefit of which the accused is entitled, and as a matter of evidence, it accompanies the accused unless and until the other evidence has convinced the [fol. 514] Jury beyond a reasonable doubt of the accused.

Gentlemen of the Jury: Take the case, consider it, and return your verdict to the Court. You will take the indictment with you along with the written charges and forms of verdict which I have stated here. Take the case, arrive at a verdict, and write your verdict on the back of the indictment which you will take in with you. At such time you want to go to lunch, the Court will be here and you can notify me at that time.

12:52 o'clock P. M. The Jury retired to deliberate.

1:40 o'clock P. M. The Jury returned to the Court Room.

Present: The Court. The Jury. The Soliciter. The Defendant and his counsel, Lawyer Billingsley.

The Court: Gentlemen, have you reached a verdict?

Mr. Ingalls: No, sir.

The Court: You want to go to lunch now?

Mr. Ingalls: Yes, sir.

The Court: I am going to let you go to lunch now and come back at 2:45. The Court will now stand in recess until 2:45. You gentlemen, of course, are under the same instructions. You are not to discuss this case with anyone, or let anyone discuss it with you, you are not to read the papers or anything of that kind. You understand the instructions previously given you. They still stand. You are in charge of the bailiff, and be back to resume your deliberations at 2:45. The others are instructed to be here at 2:45.

[fol. 515] 1:43 o'clock P. M.

Adjourned until 2:45 o'clock P. M.

3:03 o'clock P. M.

Present: The Court. The Jury. The Solicitor. The Defendant and his counsel, Lawyer Billingsley.

The Court: Gentlemen, take the case and resume your deliberations.

3:38 o'clock P. M.

The Jury returned to the Court Room.

Present: The Court. The Jury. The Solicitor. The Defendant and his counsel, Lawyer Billingsley.

VERDICT OF JURY

The Court: Gentlemen have you reached a verdict?

Mr. Ingalls: We have.

The Court: I want to make an announcement to everyone in the Court Room. Whatever this verdict is, there is to be no demonstration of any kind. Furthermore, you are not to leave your seats until after the verdict is received.

Mr. Foreman, will you read the verdict?

Mr. Ingalls: "We, the Jury, find the defendant guilty as charged and fix his punishment at death."

The Court: How is the verdict signed?

[fol. 516] Mr. Ingalls: Charles E. Ingalls.

Lawyer Billingsley: May we have the Jury polled?

The Court: You may.

The Court: I will ask the members of the Jury to stand. Beginning with Mr. Hughes, I want you to give us your names.

A Juror: Elbert R. Hughes?

The Court: Is that your verdict, Mr. Hughes?

Elbert R. Hughes: Yes, sir.

A Juror: E. Wilbur Slauson.

The Court: Is that your verdict?

E. Wilbur Slauson: Yes, sir.

A. Juror: Charles C. McGee, Jr.

The Court: Is that your verdict?

Charles C. McGee, Jr.: That is my verdict, yes, sir.

A Juror: C. E. Montoya.

The Court: Is that your verdict?

C. E. Montoya: Yes, sir.

A. Juror: Eugene C. Vann.

The Court: Is that your verdict?

Eugene C. Vann: Yes, sir.

A Juror: J. Riley Nettles.

The Court: Is that your verdict?

J. Riley Nettles: Yes, sir.

The Court: Start with the back row.

A Juror: Charles E. Ingalls.

The Court: Charles Ingalls, is that your verdict?

Charles E. Ingalls: Yes, sir.

A Juror: Rupert L. Stevens.

The Court: Is that your verdict?

Rupert L. Stevens: Yes, sir.

A Juror: Ben W. Cronier.

The Court: Is that your verdict?

Ben W. Cronier: Yes, sir.

A Juror: Frank Williford.

The Court: Is that your verdict?

[fol. 517] Frank Williford: Yes, sir.

A Juror: Horace M. Davis.

The Court: Is that your verdict?

Horace M. Davis: Yes, sir.

A Juror: John A. Perdue.

The Court: Is that your verdict?

John A. Perdue: Yes, sir.

The Court: The verdict will be received.

Lawyer Billingsley: The defendant makes a motion at this time that the verdict of this jury be set aside on the following grounds:

1. That the negroes in this community are systematically and arbitrarily excluded from serving on this petit jury which has brought this verdict against this defendant.

2. That the verdict is contrary to the facts, evidence and law in this cause.

The Court: The motion is denied.

Lawyer Billingsley: We take an exception.

The Court: All right.

The defendant will be sentenced tomorrow at 2:15 P. M.

Remove the defendant from the Court Room, and no one leave your seats until the officers have removed him from the Court Room.

3:45 o'clock P. M.

The defendant was removed from the Court Room.

The Court: Court now stands in recess.

Adjourned until Friday, June 3, 1955, at 2:15 o'clock P. M.

[fol. 518] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

Before Hon. James J. Carter, Special Judge

Montgomery, Alabama, Friday,
June 3, 1955, 2:15 o'clock P. M.

PRESENT:

The Court, Robert B. Stewart, Esq., Assistant Circuit Solicitor, Peter A. Hall, Esq., and Orzell Billingsley, Jr., Esq., for defendant, Jeremiah Reeves, Junior, defendant.

SENTENCE

The Court: Bring Jeremiah Reeves, Junior, to the bar. You have been tried by a jury and found guilty of rape and punishment has been fixed at death. The judgment of the Court is that you are guilty. Have you anything to say at this time as to why the sentence of the law should not now be pronounced upon you?

The Defendant: Yes, sir, I have. Your Honor, I am not guilty, I am not guilty. Although I am not surprised at the verdict which the jury returned against me, although I would have been surprised if I had gotten justice, and I know I was condemned solely because of my race and my color, and this has been done on both occasions when I entered this court room to face the same charges, and I didn't enter this court room asking for social equality because I knew that would have been impossible for me or any other member of my race to get, but I did enter this court room asking for equal justice which I am supposed to get, but which was also denied me, and according to the laws [fol. 519] and the Constitution of the State of Alabama I was supposed to get equal justice, but didn't get it, and according to the Fourteenth Amendment of the Constitution of the United States of America I was supposed to get equal justice, and that is denied me. Your Honor, how can I get justice when justice itself is on trial? That is all I have to say, sir.

The Court: It is considered and order by the Court, and it is the judgment and sentence of the Court, that the Sher-

iff of Montgomery County shall remove the defendant, Jeremiah Reeves, Junior, forthwith to Kilby Prison at Montgomery, Alabama, where the said Jeremiah Reeves, Junior, shall remain in custody until the 12th day of August, 1955, and in strict accordance with the law the Warden of Kilby Prison at Montgomery, Alabama, or such other person as may be authorized by law, shall put the said Jeremiah Reeves, Junior, to death by causing to pass through the body of the said Jeremiah Reeves, Junior, a current of electricity of sufficient intensity to cause the death of the said Jeremiah Reeves, Junior, and the application and continuance of such current of electricity to pass through the body of said Jeremiah Reeves, Junior, until he, the said Jeremiah Reeves, Junior, is dead.

And it is further ordered by the Court that the Clerk of this Court will issue the necessary warrant for the execution of the said Jeremiah Reeves, Junior, as required by law.

The defendant appeals from the judgment of the Court and questions of law arising in this case for the decision of the Supreme Court of Alabama.

It is further ordered by the Court that pending said appeal to the Supreme Court of Alabama, the said defendant, Jeremiah Reeves, Junior, be confined in Kilby Prison pending said appeal to the Supreme Court of Alabama.

It is so ordered.

Lawyer Billingsley: We would like to put the Court on notice we are going to file a paupers oath of the defendant.

The Court: You will have that right.

Lawyer Hall: Would Your Honor grant an order suspending sentence on notice of appeal to the Supreme Court?

[fol. 520] The Court: That is automatic. The death sentence will not be carried out pending an appeal to the Supreme Court. You have filed notice of appeal, and it will not be carried out pending appeal to the Supreme Court of Alabama.

The Sheriff: Is that all, Your Honor?

The Court: That is all. The prisoner may be removed.

[fol. 521] REPORTER'S AND JUDGE'S CERTIFICATE

[Omitted in printing]

[fol. 522] CLERK'S CERTIFICATE

STATE OF ALABAMA,
Montgomery County:

I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, in and for said State and County, do hereby certify that the foregoing pages numbered from 1 to 521, both inclusive, (Pages 1 to 191 being in Volume One; 192 to 352 being in Volume Two and Pages 353 to 521 being in Volume 3) contain a full and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein the State of Alabama was Plaintiff, and Jeremiah Reeves, Junior, was defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said defendant did on the 3rd day of June, 1955, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse the judgment of said Court, and that sentence was suspended during said appeal.

Witness my hand and the seal of said Court is hereto affixed the 21 day of September 1955.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

[fol. 523] ARGUMENT AND SUBMISSION—January 19, 1956

[Omitted in printing]

[fol. 524] IN THE SUPREME COURT OF ALABAMA

3 DIV. 751

JEREMIAH REEVES, JR.,

vs.

STATE OF ALABAMA,

Appeal from Montgomery Circuit Court

OPINION

STAKELY, Justice.

Jeremiah Reeves, Jr. (appellant), was indicted by the Grand Jury of Montgomery County for the offense of rape. He was tried before a jury upon a plea of not guilty and a plea of not guilty by reason of insanity. The trial resulted in a conviction. The case was appealed to this court where it was affirmed.—*Reeves v. State*, 260 Ala. 66, 68 So. 2d 14. On certiorari to the Supreme Court of the United States the judgment of conviction was reversed.—*Reeves v. State*, 348 U. S. 891, 99 L. Ed. 700, 75 Sup. Ct. 214.

[fol. 525] Appellant was arraigned on November 26, 1952, and on that date pleaded not guilty and not guilty by reason of insanity. When the case came up for trial the second time on May 30, 1955, appellant made a motion for permission to withdraw his former pleas in order to attack the legality of the indictment. A motion to quash the indictment was also filed. On May 30, 1955, a motion to quash the venire drawn on May 16, 1955, was filed. Appellant also filed a motion for the appointment of a lunacy commission. Another motion to quash the indictment was also filed. Appellant also filed a motion to set aside the entire jury box and to declare it void. Appellant also made a motion to allow the public to remain in the court room during the trial and further made a motion that the public be excluded only while the prosecutrix testified. All of the aforesaid motions were denied.

Testimony was taken before the court on the motion to quash the venire on the ground of systematic exclusion of negroes from jury duty in Montgomery County. The motion was denied and the case went to trial. The jury re-

turned a verdict of guilty and fixed the punishment at death. Counsel moved the court to set aside the verdict and the motion was denied. The court adjudged appellant guilty and sentenced him accordingly. It is from such judgment and sentence that this appeal has been taken.

We see no reason to set out the details of the alleged rape of the prosecutrix and the identification of the appellant as the guilty party. We have read the evidence very carefully in this regard and consider that there was clearly evidence from which the jury had the right to infer that the prosecutrix was raped and that this appellant was the one who perpetrated the act. It should be mentioned here that while on the first trial the questions of an alleged confession and inculpatory statements were raised, these questions are not involved in the instant case. In other words the entire case for the State was testimony tending to show the act which constituted the crime, with the attendant circumstances, and the identification of appellant as the party committing the crime. The defendant denied that [fol. 526] he committed the crime and there was testimony tending to show that he was at another place at the time the alleged crime was committed.

I. On this trial of the case the appellant sought to withdraw his pleas of not guilty and not guilty by reason of insanity, which were entered on arraignment in order to permit him to attack the indictment on the ground of systematic exclusion of negroes on the grand jury. The defendant was represented by counsel at the time the pleas were filed. The competency of counsel then representing defendant is not questioned. We find no error in the Court's refusal to allow the aforesaid pleas to be withdrawn. Ordinarily an accused need not be rearraigned upon the second or subsequent trial of his case. We find that in most jurisdictions when a case has been reversed it is not necessary that the defendant be rearraigned.—*Thomas v. State*, 190 P. (Okla. Cr.) 711; *Hamit v. State*, 275 P (Okla. Cr.) 361; *Steen v. State*, 242 SW (Tex. Cir.) 1047; *State v. Farrell*, 28 SE 2d (N.S.) 560; *State v. Hewitt*, 34 SE 2d (S.C.) 764. In Alabama the courts have placed a limitation upon this rule but this limitation is not important under the facts presented in this case. In Alabama if the indictment is changed by amendment (by agreement) or its scope by the fact that the

earlier conviction acts as an acquittal of a higher degree of the offense, the better practice is to rearraign the defendant prior to the second trial.—*Thomas v. State*, 255 Ala. 632, 53 So. 2d 340. In the case at bar the indictment has not been changed in any way and once having pleaded to the charge against him, we see no abuse of the court's discretion when the court refused to allow the defendant to reopen the pleading.

In Alabama there are certain statutory regulations with reference to objections to an indictment. In §§ 278, 279 and 286, Title 15, Code of 1940, there are provisions setting forth the method of attacking an indictment. Section 278 provides that the proper method is by plea in abatement. Section 279 provides that in all cases such a plea in abatement must be filed before the plea to the merits. The same is true in section 286. In *Clark v. State*, 239 Ala. 380, 195 So. 260, it is shown that under the procedural law of this state pleas in abatement must be filed before pleading [fol. 527] to the merits or in bar and it is only where the court in its discretion allows pleas to the merits to be withdrawn that pleas in abatement can be filed. The principle here referred to was recently dealt with by the Supreme Court of the United States in *Michel v. Louisiana*, 100 L. Ed. 114, 76 S. Ct. 158. In that case the appellant was indicted on February 19, 1953, and was presented to the court for arraignment on February 23, 1953. The arraignment was continued in order that counsel might be secured. In Louisiana the defendant is required to object to the grand jury before three judicial days after its term and in any case before arraignment. The Supreme Court of the United States in holding that the three day limitation was not a denial of due process, said that a motion to quash is normally a short, simple document, easily prepared in a single afternoon. It then appeared that the term of the grand jury which indicted the defendant expired March 2, 1953. The motion to quash the indictment was filed March 9, 1953, five days after the expiration of the term of the grand jury. Counsel contended that they had not been formally appointed until March 5, 1953. The Supreme Court of Louisiana held that counsel had been appointed on March 2 and the Supreme Court of the United States refused to overturn the findings of the

Louisiana Court. It should be noted that in the *Michel case, supra*, the ground for challenge of the indictment was the systematic exclusion of negroes from the grand jury. The state court found that question had been waived by the failure to file the motion to quash at the proper time. The Supreme Court of the United States did not disturb that ruling.

But there is more in this case than waiver by failure to make a timely assertion of an alleged right. As we understand the situation the question of the systematic exclusion of negroes from the grand jury was raised on the first trial of the case and was before the Supreme Court of the United States. The reversal however by the Supreme Court of the United States was apparently based upon the erroneous introduction in evidence of the alleged confession. This — borne out by the citation of authorities on which the reversal is based. Reference to the opinion of this court in *Reeves v. State, supra*, as well as the record before the Court on the former appeal, of which we take judicial notice, *Alabama Water Co. v. City of Anniston*, 227 Ala. 579, 151 So. 457, shows that the defendant filed a motion [fo.l 528] to quash the indictment by the grand jury panel on the ground that negroes had been systematically excluded therefrom. The defendant called two members of the jury commission as his witnesses in support of the motion. This court held that there was no evidence to sustain the motion. In other words the appellant had full opportunity at that time to present the contention now made.

II. There is another basis which the appellant has advanced, because of which he should be allowed to withdraw his pleas of not guilty and not guilty by reason of insanity, in order that he might now attack the indictment against him. It appears to be the insistence of appellant that the indictment was based solely on evidence before the grand jury of an alleged confession obtained from appellant and since the confession has been held invalid, it is argued that there was no evidence before the grand jury on which it could lawfully return an indictment. We are not impressed with the contention here made.

On the first trial the motion to quash the indictment was based on two grounds, (1) that an invalid confession was used before the grand jury and (2) that negroes were

systematically excluded from the grand jury in Montgomery County. The court denied the motion. It is obvious, therefore, that on the first trial the indictment was attacked because of the use before the grand jury of an invalid confession, the change from the original attack now being that the invalid confession is the sole evidence on which the indictment was found. We think it is clear that the appellant had every opportunity to seek to quash the indictment for any reason growing out of the confession and that it comes too late for him now to complain of the invalidity of the indictment.—Authorities *supra*.

Cases such as *Allen v. State*, 162 Ala. 74, 50 So. 279, cited by appellant, are not in point. In this line of cases the indictment did not meet the requirements of what is now § 419, Title 14, Code of 1940. This statute applies only to seduction cases. The present case is not a seduction case.

The original indictment is not in the present record because the court did not wish to prejudice the defendant by the verdict of guilty shown on the original indictment. [fol. 529] The record shows that by stipulation of the parties a copy of the indictment was used and that the original indictment has a list of witnesses on the back thereof. The record certainly does not indicate that the sole evidence before the grand jury when it found the indictment was the alleged confession made by the defendant. Where there is some evidence before the grand jury tending to connect the accused with the offense charged, the lack of evidence upon some essential element of the offense is not a ground for quashing the indictment.—*Clark v. State*, 240 Ala. 65, 197 So. 23. Furthermore, "'Where an investigation was made before the grand jury which returned the indictment, the sufficiency of the evidence adduced before that body cannot be raised on a motion to quash the indictment. * * * *.'"—*Clark v. State*, *supra*, and cases cited therein. See *Costello v. United States*, decided March 5, 1956 [*MS.*].

We say again that there was no error in the refusal of the circuit court to permit the withdrawal of the pleas so that the motion might be filed.

III. The appellant filed a motion to quash the venire on the ground that negroes were systematically excluded from the jury rolls of Montgomery County. A consider-

able amount of testimony was heard by the court on this motion. Appellant introduced United States Census Reports indicating that in 1950 out of 40,144 males in Montgomery County over the age of twenty-one years, 25,021 were white and 15,123 were non-white. However, the lack of proportional representation of negroes on the jury does not constitute discrimination under the facts in this case. *Brown v. Allen, Warden, etc.*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397; *Akins v. State of Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276; *Kennedy v. State*, 213 SW 2d (Tenn.) 132, cert. den. 333 U. S. 846, 92 L. Ed. 1129, 68 S. Ct. 659; *People v. Price*, 20 NE 2d (Ill.) 61, cert. den. 308 U. S. 551, 84 L. Ed. 463, 60 S. Ct. 94; *Thomas v. State of Texas*, 29 S. Ct. 393, 212 U. S. 278, 53 L. Ed. 512. [fol. 530] The Board of Jury Supervisors of Montgomery County is composed of the two Circuit Judges, Judge Walter B. Jones and Judge Eugene W. Carter, the Clerk of the Circuit Court, John R. Matthews, the Probate Judge, David E. Dunn and the Sheriff of Montgomery County, Sim Butler. Without going into great detail the testimony may be summarized as showing that the Board of the various members thereof had gone through the county in search of a list of qualified jurors. They obtained the list of names from the Association of Colored People as well as from the telephone directory, city directory and the voters list. The Board got names from stores or wherever people congregate the names were secured from everyone possible. A list had been obtained from the old Civic Betterment Society, civic clubs and labor organizations. Six or seven negroes were on the venire selected to try the case at bar. There is no way of knowing from the cards taken from the jury box whether a name was that of a white or a colored man, except that the fact might be determined sometimes from the address on the card. The testimony showed that some negroes have served on grand juries in Montgomery. The method of drawing and selection of juries was as follows: Fifty names were drawn from the jury box. These persons are summoned and the names of those appearing are put in a hat. The hat is then covered by a handkerchief and eighteen names are drawn out in open court. There was nothing on the card to distinguish white from colored persons. The [illegible] considered that it was necessary to con-

sider both the reputation and education of prospective jurors and that an honest effort was made to see that names of competent jurors were placed in the box, whether they were white or colored. There was no discussion as to whether a man was white or colored when his name was being considered for inclusion in the jury box. Voting qualification was not necessarily the criterion for jury duty and some of the jurors were not voters. Any person wanting to be on the jury list need only contact a member of the board and his name would be considered. The board tried not to put the name of anyone on the jury list who was dead, convicted of a crime involving moral turpitude, was a drunkard, or a narcotic addict. There was testimony [fol. 531] showing that one list of suggested names came from the head of the N. A. A. C. P. and names were received from people calling in, writing in or visiting. Social groups had not been consulted but civic clubs had been consulted and a number of representative colored people had been consulted for recommendations. One of the judges testified that whenever he saw a negro sitting on a jury he tried to contact that negro for more names. There was proof that the supervisors had never refused or failed to put persons on the roll by reason of his color, race or creed. There was testimony by one of the supervisors that he did not know of any venires where more than ten negroes were listed and he did not remember whether there were any negroes on the grand jury which indicted the appellant. He testified that the box was last refilled in January 1955, after this case had been argued before the Supreme Court of the United States. The names of leading negroes were given who were consulted for the purpose of securing the names of negroes to serve on the juries. There was testimony also from attorneys practicing before the bar who had more or less familiarity with the make up of juries in criminal cases and that they were accustomed in recent years to seeing negroes serving on grand and petit juries in Montgomery County. A former sheriff and a present bailiff testified that a good many grand juries had negroes on them and that there had been as many as four in some of them and that negroes had been seen sitting on juries in criminal cases and that he remembered one jury with five negroes on the jury. In short, the testimony for the State was all

to the effect that there was no discrimination on account of race, color or creed when it came to selection of those to serve on juries of Montgomery County. The appellant put a number of negroes on the stand as witnesses. These witnesses testified that they had never been called for jury duty or that they had been called but once. Many of these witnesses were Pullman porters who are out of town a considerable part of the time. All of the persons put on the stand by the appellant, according to their testimony, had spent very little, if any time around the court house.

In the case of *Thomas v. Texas*, 212 U. S. 278, 53 L. Ed. 512, 29 Sup. Ct. 383, the Supreme Court of the United States in finding no evidence of discrimination stated that the evidence showed that those responsible for obtaining jurors [fol. 532] had fairly and honestly, attempted to carry out their duties.

The court heard all of this testimony orally before it and found that there was no discrimination against negroes and no systematic exclusion of negroes from service on juries in Montgomery County because of race, creed or color.

A careful consideration of the evidence satisfies us that the great weight of the evidence shows that there was no systematic exclusion of negroes from the juries in Montgomery County. We consider that the court reached a correct conclusion and acted properly in denying the motion to quash the venire.

IV. It is insisted that the remarks of the solicitor in asking the court to present certain questions to the jury were prejudicial to the rights of appellant. The solicitor asked the court, "Inquire of the venire whether any were members of the N. A. A. C. P.?". The solicitor also stated that it was his information that the case was being financed by that group. It is not necessary that the questions asked the jury venire bring forth answers which provide a ground for challenge for cause. It is proper to have questions which might bring out matters which would enable the party to select an unbiased and unprejudiced jury. Without question attorneys may wish to omit certain persons from the jury even though they might not be able to challenge the jurors for cause. Wide latitude is allowed in the questions asked voir dire in order to give counsel the opportunity for intelligent selection of the final twelve men who will make

up the jury. There was no error in this ruling of the court.—*Rose v. Magro*, 220 Ala. 120, 124 So. 296; *Burgess v. Singer Mfg. Co.*, 30 SW. 1110; *Redus v. State*, 243 Ala. 320, 9 So. 2d 914, cert. den. 63 S. Ct. 771, 318 U. S. 774, 87 L. Ed. 1143, rehearing den. 63 St. Ct. 852, 318 U. S. 802, 87 L. Ed. 1166; §§ 63, 64, Title 30, Code of 1940.

V. When the case reached the stage for taking testimony on the merits, the court excluded the general public from the trial. The court permitted the following persons to remain in the room, the defendant, counsel representing the parties, the court officers, members of the press, radio, television or other news gathering services, uniformed officers, [fol. 533] members of the bar, defendant's pastor, members of the family and relatives of the defendant. The Alabama Constitution provides that the court may in its discretion exclude from the court room all persons not necessary in the conduct of a trial in cases of this sort.—§169, Constitution of Alabama of 1901. The legislature has also provided for this same exercise of discretion.—§320, Title 15, Code of 1940. The court was clearly not in error in its ruling in this regard. Similar acts have been upheld in many courts throughout this country. Attention is called to the following authorities in addition to the foregoing constitutional and statutory provisions hereinabove noted.—*Scott v. State*, 249 Ala. 304, 30 S. 2d 689; *Wade v. State*, 207 Ala. 1, 92 So. 101; *Keddington v. State*, 19 Ariz. 457, 172 P. 273; *Robertson v. State*, 64 Fla. 437, 60 So. 118; *Reagan v. United States*, 202 Fed. 488; *Melanson v. O'Brien*, 191 Fed. 2d 963; *Sawyer v. Duffy*, 60 Fed. Sup. 852; *Benedict v. People*, 23 Colo. 126, 46 P. 637; *Commonwealth v. Blondin*, 324 Mass. 564; 87 NE 2d 455; *Moore v. State*, 161 Ga. 648, 108 SE 47; *People v. Swafford*, 64 Cal. 223, 3 P. 809; *Sallie et al. v. State*, 155 Miss. 547, 124 So. 650; *Baker v. Utricht*, 161 Fed. 2d 304; *State v. Callhan*, 100 Minn. 63, 110 N.Y. 342.

VI. Upon proof that two witnesses on the former trial, who were at that time stationed at the Maxwell Field Air Base in Montgomery, Alabama, were absent from the jurisdiction of the trial court, one of them being in Minnesota and the other in England, the trial court permitted their testimony on the former trial to be read into the record. In this state upon the proper proof of the absence from the jurisdiction of witnesses who have previously given

sworn testimony before a tribunal of competent jurisdiction, the earlier testimony may be introduced. *Loviejoy v. State*, 32 Ala. App. 110, 22 So. 2d 532, cert. den. 247 Ala. 48, 22 So. 2d 537; *Pruitt v. State*, 92 Ala. 41, 9 So. 406; *Burton v. State*, 107 Ala. 68, 18 So. 240; *Lett v. State*, 124 Ala. 64, 27 So. 256; *Percy v. State*, 125 Ala. 52, 27 So. 844; *Jacobi v. State*, 133 Ala. 1, 32 So. 158, appeal dismissed 23 S. Ct. 48, 187 U. S. 133, 47 L. Ed. 106; *Wilson v. State*, 140 Ala. 43, 37 So. 93. There was no error in this ruling of the court.

[fol. 534] VII. There were some written charges refused the appellant. They were affirmative in nature and under the evidence in the case, were properly refused.

As is our duty, we have carefully examined the entire record to see if there was any error prejudicial to the appellant even though not called to our attention by briefs of counsel. We find no such error.

It is our conclusion that the sentence and judgment of the lower court must be upheld.

Affirmed.

All the Justices concur.

[fol. 535] In the Supreme Court of Alabama

The Court Met Pursant to Adjournment

Present: Chief Justice Livingston and Associate Justices Lawson, Simpson, Stakely, Goodwyn, Merrill and Spann

Montgomery Circuit Court, No. 5121

3 Div. 751

Jeremiah Reeves, Junior

vs.

The State of Alabama

Judgment—June 21, 1956

Came the parties, by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it

is considered that in the record and proceedings of the Circuit Court there is no error.

It Is Therefore Considered, Ordered, and Adjudged that the judgment of the Circuit Court be and the same is hereby in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Jeremiah Reeves, Junior, having expired pending this appeal, it is now ordered that Friday, September 21, 1956, be and the same is hereby fixed as the date for the execution of the Defendant, Jeremiah Reeves, Junior.

It Is Further Ordered that the Sheriff of Montgomery County, Alabama, deliver the Defendant, Jeremiah Reeves, Junior, to the Warden of Kilby Prison at Montgomery, in Montgomery County, Alabama, and that the said Warden at [fol. 536] Kilby Prison in Montgomery County, Alabama execute the judgment and sentence of the law on Friday, September 21, 1956, on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said Jeremiah Reeves, Junior, until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It Is Also Considered, Ordered, and Adjudged that the appellant, Jeremiah Reeves, Junior, pay the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

[fol. 537] [File endorsement omitted]

In the Supreme Court of Alabama, Third Division

[Title omitted]

Petition for Stay of Execution Pending Ruling on Petition for Writ of Certiorari by the Supreme Court of the United States—Filed September 18, 1956

Comes now the appellant in the above styled cause, by his attorneys, and petitions this Honorable Court to suspend execution of the sentence heretofore rendered in this case, and to stay execution of the Death Sentence heretofore set

for September 21, 1956, and as grounds for said petition appellant shows the Honorable Court the following:

1. That on the trial of this cause and on appeal in this Honorable Court petitioner raised certain questions of Federal Constitutional Law which he intends to ask the United States Supreme Court to review as soon as a petition for writ of certiorari can be prepared and filed in said Court.

2. Because of his poverty and other circumstances over which petitioner had no control he was unable to secure attorneys to prepare and file such petition for writ of certiorari until now.

3. That on the 4th day of September, 1956, Honorable Hugo L. Black, an Associate Justice of the United States Supreme Court signed and issued an order extending petitioner time for filing such petition for writ of certiorari to and including November 17, 1956.

Wherefore, Premises Considered, Your petitioner prays that execution of the sentence in this case, set for September 21, 1956, be suspended until after November 17, 1956, in order that petitioner may have sufficient time to prepare and file a petition for writ of certiorari in the Supreme Court of the United States.

Peter A. Hall, Orzell Billingsley, Jr.

[fol. 538] *Duly sworn to by Peter A. Hall; jurat omitted in printing.*

Petition Granted: 9/18/56. Date of Execution reset for December 28th, 1956. Livingston, C. J., Lawson, Stakely, and Merrill, JJ., concur.

[fol. 539] IN THE SUPREME COURT OF ALABAMA, SPECIAL SESSION, 1955-56

Montgomery Circuit Court, No. 5121

3 Div. 751

JEREMIAH REEVES, JUNIOR

vs.

THE STATE OF ALABAMA

ORDER GRANTING PETITION FOR STAY OF EXECUTION—September 18, 1956

Whereas, the Judgment of the Circuit Court of Montgomery County, Alabama, in the above styled cause was affirmed by this Court on the 21st day of June, 1956, and the date of execution of the sentence of the Circuit Court was reset and fixed for Friday, September 21, 1956; and,

Whereas, the said Jeremiah Reeves, Junior, by his Attorneys, has petitioned this Court for a suspension and stay of the execution of said sentence, in order to give sufficient time to petition the Supreme Court of the United States for a Writ of Certiorari to be directed to this Court for a hearing of said cause in the Supreme Court of the United States,

Now, Therefore, It Is Ordered by the Supreme Court of Alabama, on petition of the Defendant, Jeremiah Reeves, Junior, that the date of the execution of the death sentence heretofore entered in this cause for Friday, September 21, 1956, be and the same is hereby reset and fixed for Friday, *December 28, 1956*, and the sentence of the Court will, on said date, be carried out in all respects according to the law of this State.

[fol. 540] It Is Further Ordered that the Sheriff of Montgomery County, Alabama, deliver the Defendant (Appellant) Jeremiah Reeves, Junior, to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Warden of said Kilby Prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, *December 28, 1956*, on said day in said prison by causing a current of

electricity of sufficient intensity to cause death to pass through the body of the said Jeremiah Reeves, Junior, until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It Is Also Ordered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

It Is Further Ordered that until final execution of the sentence of the Court, jurisdiction is hereby retained over this cause.

[*Livingston, C. J., Lawson, Stakely, and Merrill, JJ., concur.*]

[fol. 541] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 542-543] In Supreme Court of the United States
October Term, 1956

No. —

Jeremiah Reeves, Jr., Petitioner

vs.

State of Alabama

Order Extending Time to File Petition for Writ of Certiorari—September 4, 1956

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 12th 1956.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 4th day of September, 1956.

[fol. 544] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 401 Misc.

[Title omitted]

On petition for writ of Certiorari to the Supreme Court of the State of Alabama.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—January 14, 1957

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is tranferred to the appellate docket as No. 692.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 66

JEREMIAH REEVES, JR.,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

N WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONER

PETER A. HALL
ORZELL BILLINGSLEY, JR.
Counsel for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 66

JEREMIAH REEVES, JR.,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the Supreme Court of Alabama (R. 469) is reported at 88 So.2d 561.

Jurisdiction

The judgment of the Circuit Court for Montgomery County was affirmed by the Supreme Court of Alabama on June 21, 1956. Time for filing petition for Certiorari was extended to and including November 17, 1956, by order of Mr. Justice Black dated September 4, 1956. Petition for writ of certiorari and motion for leave to proceed *in forma pauperis* were granted on January 14, 1957. The printed record was received by petitioner's counsel on October 17, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution of the United States.

Questions Presented

I

A. Whether a conviction for rape can stand where defendant has been tried and convicted once, and such conviction has been reversed by this Honorable Court, *per curiam,* without directions, unless defendant is reindicted and rearraigned.

B. Whether a conviction of a Negro for rape of a white woman which was founded upon an indictment obtained by the use of involuntary confessions or inculpatory statements was properly affirmed where a previous conviction founded upon such indictment has been reversed by this Honorable Court.

C. Whether petitioner was denied right guaranteed him by the Fourteenth Amendment to the United States Constitution where on his second trial for rape, the trial Court refused to allow him to withdraw pleas previously entered before his first trial, in order that he might attack his indictment on constitutional grounds.

II

A. Whether the Fourteenth Amendment is violated when petitioner is tried and convicted by a jury assembled from an array where the undisputed facts establish that Negroes have comprised from 0% to at best 10% on any venire in a County where they constitute more than 40% of the total population, and where the jury commissioners obtained the names of veniremen principally from personal acquaintances, clubs and other organizations, but knew few Negroes and virtually no Negro clubs or organizations.

B. Whether petitioner was denied his right to an impartial trial under conditions required by the Fourteenth Amendment where on qualifying the jury, the court asked each venireman about membership in the National Association for the Advancement of Colored People, at the insistence of the State Solicitor, who stated in the presence of the entire venire, that he had heard that such association was financing petitioner's defense.

III

A. Whether petitioner was denied his right to a public trial under the Fourteenth Amendment where the public is excluded from the courtroom during the trial.

Statutes Involved

Constitution of the United States
14th Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 18 U.S.C. Section 243.

Exclusion of jurors on account of race or color. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000. (June 25, 1948, c. 645, Section 1, 62 Stat. 696.)

Ala. Const. of 1901 Section 169.

In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the courtroom all persons, except such as may be necessary in the conduct of the trial.

Title 15, Code of Ala. Section 320 (1940).

Exclusion of public when evidence vulgar, etc. In all prosecutions for rape and assault with intent to ravish,

the court may, in its discretion, exclude from the courtroom all persons, except such as may be necessary in the conduct of the trial; and in all other cases where the evidence is vulgar, obscene, or relates to the improper acts of the sexes, and tends to debauch the morals of the young, the presiding judge shall have the right, by and with the consent and agreement of the defendant, in his discretion, and on his own motion, or on the motion of the plaintiffs or defendants, or their attorneys, to hear and try the said cause after clearing the courtroom of all or any portion of the audience whose presence is not necessary.

Constitution of the United States
Sixth Amendment.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Title 15, Code of Ala. Section 278 (1940).

Objections to indictments; how taken.—No objection to an indictment on any ground going to the formation of the grand jury which found the same can be taken to the indictment, except by plea in abatement to the indictment; and no objection can be taken to an indictment by plea in abatement except upon the ground that the grand jurors who found the indictment were not drawn by the officer designated by law to draw the same; and neither this objection, nor any other, can be taken to the formation of special grand jury summoned by the direction of the court.

Title 15, Code of Ala. Section 279 (1940).

Plea in abatement; when filed. Any plea in abatement to an indictment must be filed at the first session at which the indictment was found, if the accused has been arrested, or if the accused has not been arrested, such plea in abatement must be filed at the first session at which it is practicable after the defendant has been arrested and in all cases such plea in abatement must be filed before the plea to the merits.

Title 15, Code of Ala. Section 286 (1940).

When such plea filed, if sustained, new indictment preferred; limitation of prosecution. A plea to an indictment, on the ground that the grand jurors by whom it was found were not drawn in the presence of the officers designated by law, must if accused has been arrested be filed at the session at which the indictment is found, and if accused has not been arrested, it must be filed at the first session at which it is practicable after defendant's arrest; and in all cases before a plea to the merits; if sustained, the defendant must not be discharged, but must be held in custody or bailed, as the case may be, to answer another indictment at the same or the next session of the court; and the time elapsing between the first and second indictment, in such case, must not be computed as a part of the period limited by law for the prosecution of the offense.

Title 30, Code of Ala. Section 86 (1940).

Legal evidence only received before grand jury. In the investigation of a charge for any indictable offense, the grand jury can receive no other evidence than is given by witnesses before them, or furnished by legal documentary evidence; and any witness may be examined and compelled

to testify as to any offense within his knowledge, without being specially interrogated as to any particular person, time, or place.

Statement

This is petitioner's second trial for the same offense. On the first trial defendant was found guilty of rape and sentenced to death by electrocution, which judgment and sentence was affirmed by the Supreme Court of Alabama (*Reeves* v. *State*, 68 So. (2d) 14).

This Honorable Court granted certiorari and on the hearing reversed the State Court, *per curiam*, without opinion or directions (*Reeves* v. *State*, 348 U.S. 891). On the second trial petitioner was again found guilty of rape by the trial court and sentenced to death by electrocution (R. 466, 467). The Supreme Court of Alabama has affirmed (R. 469-478).

I. Events Which Preceded the Trial

On July 28, 1952, some time around noon, Mrs. Mable Ann Crowder, a 22 year old white woman, was raped in her home in the City of Montgomery, Alabama, by an unknown assailant (R. 228-234). Petitioner, a 16 year old Negro boy, was arrested on Monday, November 10, 1952, by two Montgomery County Sheriff's deputies (R. 396), taken to the County jail situated in the City of Montgomery, Alabama, where he was kept 5 or 6 minutes, and then taken immediately to Kilby Prison, a state penitentiary situated in this same County, where he was put in the "death cell", questioned, and threatened, without advice of counsel, and not allowed to see his parents from Monday, November 10, until the afternoon of Thursday, November 14, after he had made certain admissions or inculpatory statements, when his mother was allowed to see him (R. 397-400).

On Thursday, November 14, 1952, petitioner was indicted for the rape of Mrs. Mable Ann Crowder (R. 1) and was arraigned on November 15, 1952, his motion for continuance being overruled (R. 1-2), trial date was set as November 26, 1952 (R. 2). He then pleaded not guilty, and not guilty by reason of insanity (R. 2). Subsequently, on November 26, 1952, petitioner was tried in the Circuit Court of Montgomery County, Alabama, under and pursuant to the aforesaid indictment, and was convicted and sentenced to death in the electric chair (R. 20-22). The judgment and sentence of the trial court was affirmed by the Supreme Court of Alabama (*Reeves* v. *State*, 68 So. (2d) 14) (R. 469-478). This Honorable Court granted certiorari and after a hearing reversed the State Supreme Court *per curiam*, without directions. *Reeves* v. *State*, 348 U.S. 891, 75 S.Ct. 214 (R. 469).

On Monday, the 16th day of May, 1955, the Montgomery County Court met "pursuant to adjournment", and on motion of the Solicitor May 30, 1955, was set as date for petitioner's second trial.[1] On Monday, May 30, 1955, petitioner was again brought to trial in the Circuit Court of Montgomery County, Alabama, for the aforesaid offense without having been re-indicted or re-arraigned (R. 3).

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[1] The Court met "pursuant to adjournment" of the original case. The Court's Order recites " . . . and it appears to the Court that on a former day of this Court, November 15, 1952, the said defendant was duly arraigned and charged upon the indictment and pleaded thereto not guilty, and not guilty by reason of insanity; and on motion of the solicitor for the State, it is considered and ordered by the Court that the 30th day of May, 1955 be and the same is hereby appointed as the day for the trial of this cause." Nothing is said about the first trial or its disposition or remandment of the cause (R. 2-3).

II. Preliminary Motions

A. *Motion for Permission to Withdraw Pleas Entered on Original Arraignment.*

Before the jury had been selected and sworn, petitioner filed a written motion for permission to withdraw pleas entered on his arraignment in 1952 for the purpose of allowing his present attorneys the opportunity to attack the indictment on United States constitutional grounds (Def. Ex. 1, R. 37). The trial court overruled this motion (R. 39), and was sustained on appeal by the Alabama Supreme Court (R. 470-471).[2]

B. *Motion to Quash Indictment.*

Petitioner offered a written motion to quash the indictment returned on November 14, 1952 on grounds that Negroes were excluded from service on grand juries solely because of their race or color, thus violating rights guaranteed him by the Fourteenth Amendment to the United States Constitution; and asked the Court to set said motion down for hearing in order that petitioner might prove his contention (Def. Ex. 2, R. 42). The State's demurrer to this motion was sustained (R. 42-43).[3] On appeal the State Supreme Court sustained the trial court's ruling (R. 470).

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[2] The Supreme Court of Alabama, in considering the point, held "... on this trial of the case the appellant sought to withdraw his pleas of not guilty and not guilty by reason of insanity, which were entered on arraignment in order to permit him to attack the indictment on the ground of systematic exclusion of Negroes on the Grand Jury. The defendant was represented by counsel at the time the pleas were filed. The competency of counsel then representing defendant is not questioned. We find no error in the Court's refusal to allow the aforesaid pleas to be withdrawn ..." (R. 470).

[3] The State demurred to the motion and moved to strike same on the grounds, "... said motion was filed in this court after a plea to the merits answered in this case and, therefore, under Title 15, Section 278 and 279, comes too late ..." (R. 42).

C. *Motion to Quash Indictment.*

Petitioner filed a written motion to quash the indictment on the grounds that said indictment was based upon an alleged confession of guilt, obtained through coercion, force and violence, while defendant was illegally held at Kilby Prison, and that the said confession was the sole basis for the said indictment, and that a conviction of defendant in the Circuit Court of Montgomery County, Alabama, which had been affirmed by the Supreme Court of Alabama, had been reversed by the United States Supreme Court on constitutional grounds without directions remanding said cause for further trial, and asking the court to take judicial knowledge of the said facts and pointing out further that petitioner was being tried again for the same offense without being re-indicted or re-arraigned, and alleging that a valid indictment has not been returned against him, and that he was thereby being deprived of rights guaranteed him by the Fourteenth Amendment to the United States Constitution (Def. Ex. 6, R. 206-207). The Court denied this motion without a hearing (R. 207).

D. *Motion to Quash Venire.*

Petitioner moved to quash the venire of regular and special jurors called to try this cause on grounds that although, according to the 17th Decennial Census of the population of the United States, its territories and possessions for the year 1950 showed that the white male population of Montgomery County, Alabama, twenty-one years old and over, numbered 25,021, and that the Negro male population in said age group numbered 15,123, that Negroes were discriminated against in the selection of juries, and that the present jury was drawn and selected according to this practice (Def. Ex. 3 R. 44).

On the hearing of this motion it appeared that the authority for making a list of prospective jurors, or a jury roll, for Montgomery County, Alabama, and filling the jury box, rested in a Board of Jury Supervisors which was composed of the two Circuit Judges, the Probate Judge, the Sheriff of the County, and the Clerk of the Circuit Court (R. 65-66). Although the members of the Board denied racial discrimination in getting up the roll or filling the box, their testimony indicated a vast difference in methods of selecting white and colored jurors. Judge Eugene Carter, a Circuit Judge for 21 years, and a member of the Board of Jury Supervisors called as a witness for petitioner, testified that lists of prospective jurors were gotten from miscellaneous persons (R. 62), and from clubs (R. 56). He refused to identify his sources for Negro jurors because it might be embarrassing to them (R. 60). He testified further that he had charged practically all of the county's grand juries drawn since being on the bench (R. 50), and could recall only one Negro serving (R. 49), but could not recall whether he had ever charged a grand jury which included two or more Negroes (R. 50). Although Negroes composed 40 per cent of the total population (R. 54), he had never seen as many as four Negroes on a petit (trial) Jury (R. 55). Judge Carter testified that at one time there were very few Negroes on the Jury rolls of Montgomery County. "In fact we were not able to get them until the last year or two" (R. 25).

Presiding Judge Walter B. Jones, President of the Board of Jury Supervisors since 1933 (R. 65), said that among other methods used in selecting names of persons to serve as jurors, that they sometimes consulted voting lists, or they relied on personal acquaintance, and some names were sent to the Board through the mail (R. 68). Civic Clubs were contacted and asked for names but no social clubs (R. 69). However, names of Negroes were gotten by per-

sonally contacting "representative" colored people and asking them to make recommendations (R. 69), but he could not name one Negro on the jury roll (R. 70-71).[4]

John R. Matthews, Circuit Clerk for 20 years, a member, and the Clerk of the Board of Jury Supervisors, testified that names of Negroes were gotten for the jury roll and the jury box by contacting "reliable" Negroes in Montgomery, known to the Commission, and through personal acquaintances (R. 74). Although as Clerk he made up the jury roll he had "no idea" of the number of Negroes thereon (R. 74), but was sure that if he examined the jury roll, he could identify some of the names thereon as those of Negroes. On being requested to examine the jury roll, which was in court, by petitioner, for the purpose of pointing out any names thereon of persons known to him to be Negroes, he refused and was sustained by the court (R. 74-76). The court also refused to allow counsel for petitioner to examine the roll in order to ascertain the number of persons thereon (R. 76), and sustained the State's objection to petitioner's request of the witness to give the name of one Negro on the jury roll (R. 77). Petitioner objected to the court's several rulings on constitutional grounds (R. 77).

Mr. Matthews also testified that the venire of regular and special jurors drawn to try petitioner numbered 100 persons of whom 8 or 9 were Negroes (R. 77). He estimated 3000 names on the jury roll and had no idea what percentage of this number were Negroes (R. 80). He named five Negroes he had asked to submit names of prospective

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[4] "Q. Name one Negro you know on this jury roll.

Mr. Garrett: We object the court.

The Court: Objection overruled.

The Witness: If I had the jury roll I could probably go over it. We have some Negroes I see over here I wouldn't recall their names" (R. 71).

Negro jurors, two of whom probably submitted no list (R. 82-83). Some white persons were asked to submit names of Negro jurors, but no Negroes were asked for names of white persons (R. 89). Only Negroes contacted were personal acquaintances (R. 88), one of whom was known to have been convicted of felony (R. 88). Six lawyers testified with reference to service of Negroes on juries. Not one could remember more than 3 Negroes on any jury (R. 89-101).

Mr. John Blue Hill, a practicing lawyer in Montgomery County for 35 years, testified that he remembered seeing as many as 3 or 4 Negroes on jury panels in the last few years, but that he had never tried a case either civil or criminal where more than one Negro sat on the jury (R. 98).

Petitioner called as witnesses 18 Negro citizens of Montgomery County, property owners, and literate, some college trained and members of social and civic organizations. Three testified that they had been summoned on at least one occasion as members of a jury panel (R. 109, 145, 160), but not one had ever served on a jury (R. 106-173). One Negro, Winston Craig, who at the time was chauffeur for the Governor of Alabama, and had served the last 5 Governors in like capacity, had been a resident of Montgomery County for 17 years and testified that he had been summoned on one occasion and was the only Negro on the venire. He stated that he did not then serve, nor had he ever served as a juror (R. 109-110). Craig claimed a wide acquaintance among Negroes in Montgomery, and knew many of them by name and address (R. 110), but the court refused over petitioner's objections to allow him to examine the jury roll for the purpose of attempting to identify names of persons thereon known to him to be Negroes (R. 110-111).

Warren G. Brown, a Negro barber shop owner, testified that he had never been summoned to serve as a juror, and knew of no Negroes who had served as a juror in Montgomery County, Alabama, although he had a wide acquaintance among Negroes (R. 122-123). The Court refused to allow Brown to examine the jury roll for the purpose of attempting to identify any names thereon as those of Negroes (R. 123-124). The State called only one witness William F. Thetford, Circuit Solicitor since January, 1951, who testified that there had been few panels of petit jurors during his tenure which didn't include Negroes (R. 186), and that in 1954 of 18 grand jurors, 3 were Negroes (R. 186).

The Grand Jury which indicted petitioner contained no Negroes (R. 193); and the panel of regular and special jurors drawn to serve for the week of May 30, 1955 contained the names of 100 persons, 8 of whom he identified as Negroes (R. 202-203).

The trial Court's ruling denying petitioner's motion to quash the venire (R. 204-205) was sustained on appeal by the Alabama Supreme Court (R. 476).

E. *Refiling of Motion and Selection of Jury.*

Petitioner again requested permission of the court to withdraw his pleas, and refiled his motions to quash the indictment on constitutional grounds, and the court again denied the request and the motions (R. 207-210). The court then proceeded to qualify the regular and special jurors called to try this case. At the insistence of the state over petitioner's vehement objections each member of the panel was questioned relative to membership in the National Association for the Advancement of Colored People. The Solicitor stated as his reason for asking the question, in presence of all the prospective jurors, that he had heard

that the said Association was financing petitioner's defense (R. 210-211).[5] Counsel for petitioner immediately moved for a mistrial on grounds that the State had deliberately injected bias into the hearing, and to proceed under the circumstances would deprive petitioner of rights guaranteed him by the State and Federal Constitution (R. 211-212). This motion was overruled (R. 211), and the trial court sustained on appeal (R. 476-477).

After selection of the jury the court announced exclusion of all persons except members of the bar, counsel, officers of the court, law enforcement officers, the accused, his family and relatives, and "the parson of his church", members of the press including radio and news services. Petitioner's objection on Constitutional grounds, and his motion that the public be excluded only while prosecutrix testified, were overruled (R. 226-227), and the ruling was sustained by the Supreme Court of Alabama on appeal (R. 477).

III. Testimony at the Trial

A. *Commission of the Offense and Identification of the Accused.*

Prosecutrix testified that her assailant entered her home during the morning of July 28, 1952 (R. 229), compelled her to have intercourse (R. 231) and beat her unconscious (R. 232, 233). She identified her assailant in very general terms as a Negro seventeen to twenty-five years of age; taller than her husband who was about five feet nine and one-half inches tall (R. 237) without a mustache (R. 234).

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[5] "The Solicitor: The information we have . . . it may not be correct; I wouldn't say it is or isn't . . . this information came to me this case is being financed by the National Association for the Advancement of Colored People. I think it would be pertinent" (R. 210-211).

wearing dark blue or black shirt with yellow gold design and light blue trousers (R. 230). Petitioner's only resemblance to this general description is that he is a Negro. There is uncontradicted testimony that on June 30, 1952, when he was arrested by Montgomery police he was sixteen years of age and five feet six inches tall, of small build (R. 438); further, petitioner's father testified that he wore a mustache at the time of the alleged crime and had worn one since the age of fourteen (R. 444-445). After petitioner's arrest police searched his home and seized his clothing (R. 372), but on the trial the State failed to produce a single item similar to clothing described by prosecutrix.

B. *Inculpatory Statements and Confession: Testimony by Prosecutrix and Witness Clark.*

Prosecutrix identified petitioner on the trial as her assailant (R. 229); however, on cross examination it was brought out that he had read an unsigned statement then given her which she supposed defendant had made (R. 237)[6] and after observing him alone in a room through a "glass" (R. 235). Witness Clark testified that on the date of the alleged rape close to 12:30 P. M. he had picked up a Negro

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[6] "By Lawyer Hall:

Q. Let me ask you a little something further with reference to your alleged identification of this defendant in November. Were you told on that occasion that he had confessed before you looked at him?

A. I was given a written statement, but it wasn't signed.

Q. You were given a statement, or a statement allegedly made by this defendant?

A. I suppose so. It had his name on it, but it wasn't signed.

Q. It did have his name on it?

A. Yes.

Q. You were given that statement before you looked at him?

A. That is right.

Q. You had read that statement before you looked at him?

A. That is right . . . " (R. 266).

man trotting along Cleveland Avenue (R. 246), that he rode with him five or six blocks (R. 244). He testified that the man wore blue pants, a flowery colored sports shirt, and a straw hat (R. 244). He identified petitioner as the hitch hiker, after having a conversation with him at the Montgomery City Hall in 1952, but on the trial could not remember the month he had seen him in 1952 (R. 256).

Neither the written statement shown Mrs. Crowder nor the conversation between Clark and Petitioner, as such, were introduced by the State on the trial.

C. *Petitioner's Defense.*

Petitioner took the stand to deny that he committed the crime (R. 394-395), and to testify that he had been at home on the morning of the alleged rape until after noon (R. 393-394), that he had played checkers on that morning with a girl named Rebecca (R. 407), and that he remembered the day because on the afternoon of that day he had been picked up by the police and taken to jail where he was held without charge until nine or ten o'clock at night (R. 393-394). The testimony of Rebecca Mitchell, deceased, taken in 1952 on petitioner's first trial, was read into the record, to the effect that petitioner was at her house playing dominoes on the morning of the crime from eleven A. M. until four P. M. (R. 385-386).

ARGUMENT

I.

A.

Due process of law guaranteed by the Fourteenth Amendment to the United States Constitution was denied to petitioner, by refusal of the trial Court to re-indict and re-arraign petitioner, or allow him to withdraw pleas entered on arraignment in order to attack his indictment on constitutional grounds.

U. S. Constitution, Amendment 14;
Jeremiah Reeves, Jr. v. *State of Alabama,* 348 U.S. 891, 75 S.Ct. 214 U.S.C.A.;
Canty v. *Alabama,* 309 U.S. 629, 60 S.Ct. 612;
Vernon v. *Alabama,* 313 U.S. 547, 61 S.Ct. 1092;
Reece v. *State of Georgia,* 350 U.S. 76, 76 S.Ct. 167;
Chambers v. *State of Florida,* 309 U.S. 227;
Hill v. *State,* 20 Ala. App. 197, 101 So. 298;
Michel v. *Louisiana,* 100 L.Ed. 114, 76 S.Ct. 158;
Title 30, Sec. 86, 1940 Code of Alabama;
24 C.J.S., page 1128, Paragraph 1951.

Petitioner, at the outset, admits that under ordinary circumstances, the mere fact that a cause has been reversed on appeal would not necessitate re-indictment or re-arraignment. However, under the circumstances surrounding this case, it is impossible that petitioner could have had fair trial under Alabama practice and the Fourteenth Amendment to the United States Constitution unless he had been either re-indicted and re-arraigned, or allowed to withdraw pleas entered on the original arraignment in

1952, in order that he might attack his indictment on constitutional grounds.[7]

Petitioner's motion to quash the indictment made before the jury was qualified and sworn, went to the legality of the evidence before the grand jury at the time the indictment was returned against him, and alleged that the sole basis of the indictment returned against him on November 14, 1952, was an alleged confession which was obtained from him through coercion, violence and threats of violence (Def. Ex. 6, R. 208-210). There is no evidence in the record as to what was before the grand jury, or who testified before the grand jury, but the only testimony connecting petitioner with the offense was that given by Mrs. Crowder and the witness Clark (R. 229, 256). Assuming that the prosecutrix testified before the grand jury on November 14, 1952, after she had visited the city jail for the purpose of identifying defendant. Her testimony on the trial shows conclusively that on November 12, 1952, before she had seen defendant and allegedly identified him, she had been given a statement which she supposed was made by defendant (R. 237).

"By Lawyer Hall:

Q. Let me ask you a little something further with reference to your alleged identification of this defendant in November. Were you told on that occasion he had confessed before you looked at him?

A. I was given a written statement, but it wasn't signed.

Q. You were given a statement allegedly made by this defendant?

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[7] Alabama statutes require that an indictment may be attacked only by pleas in abatement which must be made before pleading to the merits on arraignment (R. 526-527). Section 278, 279, Title 15, 1940 Code of Alabama; Section 286, Title 15, 1940 Code of Alabama.

A. I suppose so. It had his name on it, but it wasn't signed.

Q. It did have his name on it?

A. Yes.

Q. You were given that statement before you looked at him?

A. That is right."

In light of her original general and vague description of her assailant, it is reasonable to assume that her identification is based, in large measure, on the "statement", and this identification and the statement, or the essence of the statement was given to the grand jury. Further, under the facts produced on this trial it is reasonable to infer that the indictment in this cause was founded solely on the identification which was based on the aforesaid statement, plus testimony of the witness Clark.

On this trial the State did not introduce any confession or inculpatory statements into evidence; however, petitioner contends that he was caused through fear, coercion, violence, threats of violence to make such statements and it is his contention that such confession or statements were shown to the prosecutrix before she identified him on November 12, 1952, and in turn to the grand jury before the indictment was returned on November 14, 1952, and that such use of the confession or statements which have been ruled out of this cause by this Court violates his constitutional rights to due process and equal protection of law just as much as if they had been introduced on the trial and gone to the jury.

It is petitioner's further contention that the trial court was put in fatal error when it refused to allow him to attempt to prove the allegations of his motion which were, to the effect, that the only evidence before the grand jury

which indicted him was illegal, and that the said indictment was therefore void.[8] The Alabama Supreme Court erred when it affirmed. There is no testimony in the record to the effect that any witnesses testified before the grand jury or that it had any other type of proof before it at the time the indictment was returned, and it is reasonable to assume that defendant may have been able to prove the grounds of his motion. Anyway, on a trial for his life he should have had the chance, if the guarantees of our law are to have any meaning.

U.S.C.A. Constitution, Amendment 14;
Title 30, Sec. 86, 1940 Code of Alabama.

It is suggested further that after a review of his prior conviction on certiorari, this Honorable Court in the case of *Jeremiah Reeves, Jr.* v. *State of Alabama,* 75 S.Ct. 214, the judgment of the Supreme Court of Alabama was reversed unconditionally, and that all the proceedings on the former trial were nullified by the said decree, and petitioner was entitled to be discharged, and that in order to try him again he should have been re-indicted and re-arraigned.

24 C.J.S., page 1128, Paragraph 1951, and cases cited.

The trial Court took official notice of the fact that petitioner had been indicted by the Grand Jury of Montgomery County on the 14th day of November 1952 and arraigned

[8] In *Hill v. State,* 20 Ala. App. 197, 101 So. 298 which was an appeal of a conviction of violation of liquor laws, before pleading the defendant made a motion to quash the indictment, "because there was no legal evidence against the defendant in this case before the grand jury which found the indictment on which he was to be tried," the Alabama Supreme Court held that this motion presented an issue of fact to be determined by the trial court before the defendant could be required to plead on the merits.

on November 15, 1952 (R. 207-208). It was pointed out to the Court that petitioner's present counsel were not the same attorneys who represented him on the previous trial (R. 38). A written motion properly verified, was filed, before the jury was sworn, requesting the Court's permission to withdraw pleas previously entered on petitioner's arraignment in 1952 in order that he might file motions testing the legality of the aforesaid indictment (Def. Ex. 1, R. 4, 39).

The State objected to the motion on the authority of Section 286 of Title I of the 1940 Code of Alabama which requires pleas attacking the formation of grand juries to be filed before arraignment and the trial court overruled the motion (R. 39) and was sustained on appeal by the State Supreme Court (R. 470, 471). The Supreme Court of Alabama in ruling on this point cited with approval the recent decision of this Honorable Court in *Michel* v. *Louisiana*, 100 L.Ed. 114, 76 S.Ct. 158, refusing to reverse the Louisiana Court, and holding that John Michel had waived the right to attack his indictment on grounds of systematic exclusion of Negroes from service on the grand jury, because of race or color, in that he had not exercised his right to do so within the time required by the Louisiana Statute (R. 471-472). Mr. Justice Clark for the court held in the *Michel* case "We do not find that this requirement on its face raises an insuperable barrier to one making claim to federal rights. The test is whether the defendant has had 'a reasonable opportunity to have the issue as to the claimed right heard and determined by the Court' . . ." In *Michel* the defendant had had three days at least, after he had secured competent counsel, within which to act. Petitioner here was indicted November 14, 1952 (R. 1), and arraigned on November 15, 1952 when his then counsel asked for a continuance which was refused (R. 1-2). There

can be no doubt, that conviction under the facts of this case cannot survive the test set out in *Michel*. Under no interpretation of the facts can it be said that petitioner "had a reasonable opportunity to have the issue as to the claimed right heard and determined" by the State County.

In *Reece* v. *Georgia*, 350 U.S. 76, 76 S.Ct. 167, which was decided during the same term and at the same time as *Michel*, the same question was presented. Defendant had been prevented from attacking his indictment by a procedural statute of Georgia. This Honorable Court reversed the Georgia Court—holding that *under the circumstances* (emphasis ours) the application of the Georgia rule of practice to the accused, a semi-literate Negro, violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. An appraisal of the facts in this case indicates clearly that the rule set out in *Michel*, and applied in *Reece*, is controlling, and that petitioner was denied his constitutional rights.

Assuming for the purpose of argument that the previous indictment and arraignment of petitioner was sufficient to support his second trial, where, as in this case, it is shown that only some part of one day elapsed between petitioner's indictment and arraignment and that he had been held incommunicado without advice of counsel until after his indictment and that his then counsel had unsuccessfully sought more time before pleading (R. 2), and serious question is proposed on the trial going to the legality of the aforesaid indictment. It is an abuse of discretion for the Court to refuse petitioner that chance to test the legality of the said indictment. Indictment for felony is serious indeed, and where the offense charged is a capital crime and the accused may lose his life he should not be deprived of any safeguard for individual rights, especially where such deprivation is based on a matter of procedure except

that it appears to the court that the grounds advanced to support such rights are unreasonable or capricious. Especially is this true where there is a paucity of convincing evidence.

Petitioner also offered a motion to quash which alleged arbitrary exclusion of Negroes from the grand jury which indicted him, and from grand jury service in Montgomery County, solely because of their race or color in violation of his constitutional rights (Def. Ex. 2, R. 5, 42)—which the trial court denied without a hearing (R. 43). The Circuit Solicitor who presented evidence to the grand jury which indicted the defendant testified that although some Negroes had served on one half of the grand juries organized during his tenure of office that in his best judgment there were no Negroes on the grand jury which indicted petitioner (R. 193). Other testimony in the record indicates that defendant would have been able to prove his motion if given the chance by the trial court, and under our law he should have had that chance.

II.

The Conclusion of the Supreme Court of Alabama that petitioner failed to prove systematic exclusion of Negroes from jury service solely because of race or color is incorrect.

Patton v. *State of Mississippi*, 332 U.S. 463;
U. S. Constitution, Fourteenth Amendment;
Title 18 U.S.C., Sec. 243;
Cassell v. *Texas*, 339 U.S. 463;
Avery v. *Georgia*, 345 U.S. 559, 73 S.Ct. 891;
Williams v. *Georgia*, 349 U.S. 375, 75 S.Ct. 814;
Hernandez v. *Texas*, 347 U.S. 475, 74 S.Ct. 667.

The State used a system of jury selection which had to result in systematic exclusion of Negroes from juries, and which, in fact, resulted in such exclusion contrary to the Fourteenth Amendment of the United States Constitution and Title 18 U.S.C., Sec. 243.

The Alabama statute which sets the qualifications of jurors, requires, with a few exceptions, that jurors shall be "male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment . . . " (R. 178-177). It further directs that the commission clerk who "is charged with the duty of seeing" that the names of all qualified persons are placed in the jury box, "scan the registration lists, the lists returned to the tax assessor, any city directories, telephone directories, and any and every other source of information from which he may obtain information . . . " (30 Code of Ala. Sec. 24 (1940).) (R. 177-178). However, the jury commissioners for the most part limited names in the box to persons whom they knew personally or to persons whose names they had obtained from individuals or organizations with whom they were personally acquainted (R. 47, 73, 82, 83).

As Mr. Justice Reed pointed out in *Cassell* v. *Texas*, 339 U.S. 282, 288, one might expect that in a community like Montgomery the opportunity for which jury commissioners to have personal acquaintanceship with Negroes is limited. Although they testified that they made efforts to obtain names of "high class" or "good" Negroes (R. 82-84), their success does not appear to be much better than that discussed in *Hill* v. *Texas*, 316 U.S. 400, 402, or *Cassell* v. *Texas*, 339 U.S. 282, 288, fn. 23, where avowedly diligent, but unsuccessful efforts to obtain Negroes on a personal basis did not avoid condemnation by this Court.

The Board of Jury Supervisors is composed of the two circuit judges, the Probate Judge, the Sheriff and the Circuit Court Clerk (R. 66). Judge Eugene Carter (R. 44-65), Judge Walter B. Jones (R. 65-72), Circuit Clerk John R. Matthews (R. 72-89) and several other witnesses all testified that Negroes were not discriminated against.[9] However, the smallness of the number mentioned as having served at any one time, in view of the percentage of Negroes in the County, indicates discrimination. After testimony indicating a wide acquaintance with Negroes, Defendant asked the Clerk of the Board to examine the jury roll and identify as many Negroes as he could. He refused and the Court refused to require him to examine the roll (R. 75-76). Counsel for defendant requested permission of the Court to count the names on the jury roll, and the Court refused such permission (R. 76). The Clerk of the Jury Commission was asked to give the name of one Negro on the roll but the court sustained the State's objection to this request (R. 77). Winston Craig, a Negro resident of Montgomery County for seventeen (17) years testified that he had a wide acquaintance among Negroes living in the County (R. 110), but was not allowed, at the suggestion of the defendant's counsel, to examine the jury roll for the purpose of ascertaining the number of names of Negroes, if any, he could identify therein (R. 110-111).

Warren H. Brown, another Negro witness, a barber shop proprietor, with a large acquaintance among Negroes in the County was not allowed to examine the jury roll for the purpose of identifying any names thereon as those of Negroes (R. 123-124).

Eighteen Negroes, all possessing the qualifications and none of the disqualifications under the Statute, testified that

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[9] Mere assertion by public officials that there has been no discrimination will not suffice. *Hernandez* v. *State of Texas*, 347 U.S. 475, 74 S.Ct. 667.

they had never served on a jury in Montgomery County although three (3) had been summoned as veniremen and collectively knew very few Negroes who had (R. 106-173).

Although the same set of facts do not appear here as in *Williams* v. *Georgia*, 349 U.S. 375, 75 S.Ct. 814, or *Cassell* v. *Texas*, 339 U.S. 463, the irregular method of jury selection used by the members of the Board of Jury Supervisors, and particularly as applied to selection of Negroes (R. 47, 74) brings this case squarely within the rule of those cases. Considering the fact that testimony showed that very few Negroes had served on juries in the past, and in view of the testimony of one of the Supervisors, Circuit Judge Eugene W. Carter who had organized most of the Grand Juries in his twenty-one (21) year tenure, that he remembered one time when Negroes on juries were few, "In fact we were not able to get them until the last year or two" (R. 55), we must suppose that the number of them now on venire was more than usual. Of the one hundred (100) persons making up the panel, the Circuit Solicitor who prosecuted this cause identified only eight (8) as Negroes (R. 202), none of whom served on the trial jury (R. 225). This in a county where Negroes made up approximately 40% of the total population renders the method of jury selection suspect.

Consideration of the testimony and evidence adduced on the hearing, plus the refusal of the trial court to permit petitioner to examine the jury roll for the purpose of ascertaining the number of persons enrolled, and the number of Negroes on the roll, if any, substantiated the allegations of defendant's motion to quash venire.

III.

By upholding the trial court's denial of a public trial and refusal to declare a mistrial after the State prosecutor had made prejudicial statements in the presence of the venire from which the jury was selected, the court below denied petitioner his constitutional rights to a fair and impartial trial, and is in probable conflict with decisions of this Court.

50 C.J.S. pages 976-977 paragraph 209;
In Re Oliver, 68 S.Ct. 499, 333 U.S. 257.

When the Court was about to qualify the jury, it asked for suggestions from counsel (R. 210).

The Solicitor who prosecuted for the State answered, in the presence of the entire panel:

> "The Solicitor: I would like each member of the jury panel qualified as to whether they are, or not, a member of the National Association for the Advancement of Colored People" (R. 210).

Counsel for petitioner objected on grounds that such a question was not pertinent or proper on qualification (R. 210-211) and on further grounds that reference to the National Association for the Advancement of Colored People was made by the State to misdirect issues and prejudice the minds of the jurors (R. 211).

Thereupon, in answer to the Court's question:

> "The Court: Do you wish to reply to that?
> The Solicitor: The information we have . . . it may or may not be correct. I would not say it is or is not this information came to me this case is being financed by the National Association for the Advancement of Colored People. I think it would be pertinent" (R. 211).

The Court overruled defendant's objections (R. 211) and defendant then moved for a mistrial on grounds that " . . . the Solicitor of Montgomery County, Alabama deliberately injected into this cause an issue calculated to bias or prejudice the minds of the jurors, who are all present and heard what the Solicitor said and the discussion about it" (R. 211).

Defendant's motion was refused and he was granted an exception based on denial of rights guaranteed him by the United States Constitution (R. 211) which ruling was sustained by the Alabama Supreme Court (R. 476-477). Defendant insists that the Court exceeded its discretion in qualifying the jury. Conceding that the Court should ascertain the extent of the prospective juror's financial interest in the trial by proper questioning, it is defendant's contention that this could have been done very easily by simply asking whether or not any one of the prospective jurors had contributed to the accused's defense fund. The assertion by the State that N.A.A.C.P. was financing petitioner's defense was a death blow to an impartial hearing before this jury of all white Southerners. It is defendant's further contention that the State's suggestion of interest on the part of the National Association for the Advancement of Colored People, made in the presence of the jury, was unnecessary and uncalled for and was made solely for the purpose of prejudicing the jury against the defendant and his counsel.

Although mere suggestion of interest in the case by the N.A.A.C.P. was like waving a red flag before a bull, mere membership on the part of any juror could not have, in itself, been a reason for the Court to disqualify him, or for the State to challenge for cause. It would have been necessary for further proof to prove prejudicial interest.

The trial Court's exclusion of the general public was a violation of defendant's rights under the United States Constitution. Especially was this true during that portion of

the trial when the prosecutrix was not testifying. While the Court excused certain persons from its ban, the general public was excluded. Among them were defendant's friends, whose presence may have made a difference in the outcome of this trial, in that testimony on the trial may have awakened some memory in some one or more of them, which may have been invaluable to petitioner in proving his alibi.

The right to a public trial, explicitly set forth in the Sixth Amendment and in corresponding provisions of almost every state constitution is one of the most ancient and deep-rooted rights of an accused in our legal tradition. It has variously been attributed to immemorial common law usage, historical accident, aversion to Star Chamber proceedings, and reaction to the procedures of the Inquisition, but whatever its origin, the right is so widely and uniformly recognized that it may fairly be described as fundamental. Throughout the English-speaking world it is not disputed that a trial must be public. It is thus apparent that the right to a public trial is "implicit in the concept of ordered liberty" which is due process of law, *Palko* v. *Connecticut*, 302 U.S. 319, 325. Indeed, this Court expressed its own concurrence in the sanctity of the public trial as an aspect of due process *In Re Oliver*, 333 U.S. 257, 273, where this Court noted "this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public . . . "

CONCLUSION

Petitioner has set forth in his argument a number of reasons why the judgment below should be reversed by this Court: The failure of the State to re-indict and re-arraign petitioner before trial; refusal to allow him to withdraw pleas previously entered on arraignment in order that he might attack his indictment on constitutional grounds; systematic exclusion of Negroes from juries, improper and prejudicial remarks in qualifying the jury, and refusal to give him a public trial.

As in all cases where a number of errors occur these could not but have a cumulative effect.

Therefore, because of the denial of each of the constitutional rights complained of in this brief and because of their cumulative effect petitioner submits that the judgment below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957
NUMBER 66

JEREMIAH REEVES, JR.,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

BRIEF AND ARGUMENT OF RESPONDENT

On Writ Of Certiorari To The
Supreme Court Of Alabama

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BRIEF AND ARGUMENT OF RESPONDENT

I.

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported as follows:

Jeremiah Reeves, Jr., vs. State of Alabama, 264 Ala. 476, 88 So. 2d 561.

II.

JURISDICTION

The judgment of the Circuit Court of Montgomery County was affirmed by the Supreme Court of Alabama on June 21, 1956. The time for filing petition for writ of certiorari was extended to November

17, 1956, by order of Mr. Justice Black, dated September 4, 1956. The writ of certiorari and motion to proceed **in forma pauperis** were granted on January 14, 1957. The jurisdiction of this Court is invoked under 28 U S C Section 1257 (3), Defendant having asserted in the Courts below rights, privileges and immunities conferred by the Constitution of the United States.

III.

QUESTIONS PRESENTED

The petition in this case presents the following questions:

1. On matter of the indictment:

   A. When Defendant's first conviction has been reversed because of the introduction of statements in the nature of a confession, must the Defendant be re-indicted and re-arraigned?

   B. On Defendant's second trial, after plea to the merits, may he inquire into the nature and extent of evidence before the Grand Jury when statutes require pleas in abatement to be filed before plea to the merits?

   C. Where statutes require pleas in abatement to be filed before plea to merits, has Defendant been denied due process when, at arraignment, through counsel of his own selection, he entered a plea of not

guilty and not guilty by reason of insanity; then, after the case was reversed, on the second trial, his motion to be allowed to withdraw his plea to the merits and to file a motion to quash the indicament because of alleged systematic exclusion of Negroes from the Grand Jury was denied by the Court?

2. On matter of the jury:

A. Does due process require proportional representation of races on jury panels?

or

Where population of the county is about 60% white and 40% Negro, and testimony shows that Negroes are regularly on venires drawn for grand and petit juries — in fact, there were six or seven then sitting in Court as a part of the venire for the day; that the jury commissioners had revised the jury roll only five months earlier, using information from telephone directory, city directory, voters' list, Civic Betterment Society (Negro), civic clubs, labor organizations, NAACP, individuals, and their personal knowledge; that they did not exclude Negroes, but had made special efforts to find those who were qualified, both white and Negro, has the Defendant

been denied due process when the trial court refuses to quash the venire after a full hearing of this evidence from thirty witnesses?

B. Has the Defendant been denied due process when the Court, at the request of the Solicitor, qualified the venire by asking — among other questions — if any juror was a member of NAACP?

3. On matter of public trial:

A. Has the Defendant been denied a public trial under the Fourteenth Amendment when the court, under constitutional and statutory authority, excluded the public with the exception of Defendant and his counsel, court officials, attorneys, members of the press, radio, television and other news gathering services, uniformed officers, members of the bar, Defendant's pastor, members of the family and relatives of the Defendant?

IV.

STATUTES INVOLVED

In addition to those set out in Defendant's brief on pages 4, 5, 6 and 7.

Title 30, Section 3, Code of Alabama 1940:

The following persons are exempt from jury duty, unless by their own consent:

Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of the duties; the superintendent, physicians, and all regular employees of the Bryce hospital in Tuscaloosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such.

Title 30, Section 20, Code of Alabama 1940:

The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the jury commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given. Upon the completion of the roll the jury commission shall cause to be prepared plain white cards all of the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the person whose name has been placed on the jury roll; writing or printing but one person's name, occupation, place of residence and of business on each card. These cards shall be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe or vault in the office of the probate judge, and if there be none in that office, the jury commission shall deposit it in any safe or vault in the court house to be designated on the minutes of the commission; and one of said keys thereof shall be kept by the presi-

dent of the jury commission. The other of said keys shall be kept by a judge of a court of record having juries, other than the probate or circuit court, and in counties having no such court then by the judge of the circuit court, for the sole use of the judges of the courts of said county needing jurors. The jury roll shall be kept securely and for the use of the jury commission exclusively. It shall not be inspected by any one except the members of the commission or by the clerk of the commission upon the authority of the commission, unless under an order of the judge of the circuit court or other court of record having jurisdiction.

Title 30, Section 21, Code of Alabama 1940:

The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of

sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so.

Title 30, Section 24, Code of Alabama 1940:

The jury commission is charged with the duty of seeing that the name of every person possessing the qualifications prescribed in this chapter to serve as a juror and not exempted by law from jury duty, is placed on the jury roll and in the jury box. The jury commission must not allow initials only to be used for a juror's name but one full Christian name or given name shall in every case be used and in case there are two or more persons of the same or similar name, the name by which he is commonly distinguished from the other persons of the same or similar name shall also be entered as well as his true name. The jury commission shall require the clerk of the commission to scan the registration lists, the lists returned to the tax assessor, any city directories, telephone directories and any and every other source of information from which he may obtain information, and to visit every precinct at least once a year to enable the jury commission to properly perform the duties required of it by this chapter. * * * * * .

Title 30, Section 52, Code of Alabama 1940:

In civil and criminal cases, either party shall have the right to examine jurors as to their qualifications, interest, or bias that would affect the trial of the case, and shall

have the right, under the diection of the court, to examine said jurors as to any matter that might tend to affect their verdict.

Title 30, Section 63, Code of Alabama 1940:

Whenever any person or persons stand indicted for a capital felony, the court must, on the first day of the session or as soon as practicable thereafter, make an order commanding the sheriff to summon not less than fifty nor more than one hundred persons, including those drawn on the regular juries for the week set for the trial of the case, and shall then in open court draw from the jury box the number of names required, with the regular jurors drawn for the week, set for the trial, to make the number named in order, and shall cause an order to be issued to the sheriff to summon all persons therein named to appear in court on the day set for the trial of the defendant, and must cause a list of the names of all the jurors drawn for the week in which the trial is set, and those drawn as provided in this section, together with a copy of the indictment, to be forthwith served on the defendant, by the sheriff, at least one entire day before the day set for the trial, and the defendant shall not be entitled to any other or further notice of the jurors drawn for his trial nor of the charge of indictment upon which he is to be tried. If the persons summoned as jurors fail to appear, or if the panel is exhausted by challenges, neither the defendant nor his counsel is entitled to a list of the persons summoned to supply their places.

Title 30, Section 64, Code of Alabama 1940:

> On the day set for the trial if the cause is ready for trial, the court must inquire into and pass upon the qualifications of all the persons who appear in court in response to the summons to serve as jurors, and shall cause the names of all those whom the court may hold to be competent jurors to try the defendant or defendants to be placed on lists, and if there is only one defendant on trial shall require the solicitor to strike off one name and the defendant strike off two names, and in case there are two or more defendants on trial, the solicitor shall strike one and every defendant shall strike one name, and they shall in this manner contiue to strike names from the list until only twelve names remain thereon. The twelve thus selected shall be sworn and empaneled as required by law for the trial of the defendant or defendants.

V.

STATEMENT OF THE CASE

The Defendant, Jeremiah Reeves, Jr., was indicted by the Grand Jury of Montgomery County, Alabama, for the offense of rape. He was tried before a jury upon a plea of not guilty and the trial resulted in a conviction. The case was appealed to the Supreme Court of Alabama where it was affirmed and certiorari was granted by the Supreme Court of the United States, where the cause was reversed. (**Reeves vs. Alabama,** 348 U. S. 891, 99 L. Ed. 700). This is the second trial. This Court reversed the first con-

viction, per curiam, without opinion, citing **Canty vs. Alabama,** 309 U. S. 629, 84 L. Ed. 988, and **Vernon vs. Alabama,** 313 U. S. 547, 85 L. Ed. 1513. In Canty, the judgment was reversed without opinion or citation of authority; the Vernon case was reversed on authority of **Chambers vs. Florida,** 309 U. S. 227, 84 L. Ed. 716, and **White vs. Texas,** 310 U. S. 530, 84 L. Ed. 1342. In both cases, the Court reversed the conviction on one ground: the use of an illegally obtained confession.

On the first review of this case, the Defendant presented, ably briefed and argued, the use of statements in the nature of a confession, systematic exclusion of Negroes from the jury panel, and exclusion of the public from the trial. Since the two cases cited by the Court in reversing the first conviction deal only with the use of confessions, we feel that the Court felt satisfied with the system of selecting jurors and with the Court's authority and discretion in excluding the general public; however, we find the Defendant again urges both of these issues in his present petition.

Defendant was arraigned on November 15, 1952, and on that date pleaded not guilty and not guilty by reason of insanity (R. 2). At the second trial, on May 30, 1955, Defendant made a motion for permission to withdraw his former pleas in order to attack the legality of the indictment (R. 4-5). A motion to quash the indictment was also filed (R. 5). A motion to quash the venire was filed (R. 8). Defendant also filed a motion for appointment of a lunacy commission (R. 11). Another motion to quash the indictment was filed (R. 13). Defendant also filed a motion to set aside the entire jury box (R. 15), and a motion to declare void the composition sworn to try the Defend-

ant (R. 16). On page 17 of the transcript, we find a motion to allow the public to remain during the trial and a motion to exclude the public while the prosecutrix testified. Both motions were filed by counsel for Defendant. The judgment on pleadings appears on pages 18-20 of the transcript. All motions were denied.

Testimony was taken on the motion to quash the venire on the grounds of systematic exclusion of Negroes from juries in Montgomery County. The motion was denied and the case went to trial. The jury returned a verdict of guilty and fixed punishment at death (R. 20-21). Counsel orally moved the Court to set aside the verdict and the motion was denied (R. 21). The Court adjudged Defendant guilty (R. 21-22) and sentenced him accordingly (R. 22). The trial proceedings were reviewed by the Supreme Court of Alabama, which affirmed the judgment of conviction and the sentence imposed. (See **Jeremiah Reeves, Jr., vs. State of Alabama,** 264 Ala. 476, 88 So. 2d 561). On September 4, 1956, time for filing petition for certiorari was extended by Mr. Justice Black to November 17, 1956. The petition was granted on January 14, 1957.

VI.

STATEMENT OF FACTS

Since the major portion of the testimony deals with the motion to quash the venire, we will first set out that testimony.

We will then set out the testimony on the merits of the case.

Testimony on the Motion

In support of Defendant's motion, he offered the following witnesses:

Honorable Eugene W. Carter, Circuit Judge of Montgomery County, Alabama; and a member of the Board of Jury Supervisors of Montgomery County, Alabama, testified that as a member of the Board of Jury Supervisors, he regularly attended meetings; that the Board had gone through the County in search of a list of qualified jurors (R. 46); and that they had obtained a list of names from the Union Association of Colored People, as well as from the telephone directory, City directory and the voters' list (R. 46-47). He testified that the Board got names from stores or wherever people congregated and that names were secured from everyone possible (R. 47). He testified that a list had been obtained from the Old Civic Betterment Society, civic clubs and labor organizations; that six or seven Negroes were on the venire selected to try the instant case, and that one had been excused by agreement (R.48).

Judge Carter testified that there was no way of knowing from the cards drawn from the jury box whether a name was that of a white or colored man, except that the fact could sometimes be determined from the address on the card (R. 48-49).

He testified that some Negroes have served on grand juries in Montgomery County (R. 49). He described in detail the method of selecting grand juries: fifty names are drawn from the jury box; these persons are summoned and the names of those appearing are put in a hat; the hat is then covered by a handkerchief and eighteen names are drawn out in open

court. (R. 49-50). He stated that there was nothing on the cards to distinguish white from colored persons (R. 50-51).

It was Judge Carter's testimony that the Jury Supervisors tried to get men with good reputations, between the ages of twenty-one and sixty-five, who were residents of Montgomery County, and who were believed to be honest and upright and to have a certain amount of education (R. 52-53). If the Supervisors did not know the people selected, persons in the community would recommend them to the Board (R. 52). He further testified that it is necessary, under the law, for the occupations of the prospective jurors to be known (R. 53), and those who would be exempt under the law were not usually listed (R. 53). Judge Carter testified that the ratio of whites and Negroes in Montgomery County was approximately 60-40; that Negroes were not discriminated against by those selecting the names for the jury list (R. 54-56).

He testified that it was necessary to consider both the reputation and education of the prospective jurors and that an honest effort had been made to see that competent jurors were placed in the box, whether they were white or colored; there was no distinction in the card and that, as a matter of fact, there was no discussion as to whether a man was white or colored when his name was being considered for inclusion in the jury box (R. 56).

It was his testimony that the voting qualification was not necessarily the criterion for jury duty and some of the jurors were not voters (R. 56-57). Any person wanting to be on the jury list need only contact him and his name would be considered (R. 57).

He testified again that it could not be determined by looking in the jury book whether a man was white or colored, unless the person examining said book knew him personally or recognized the address (R. 60). He said that the Board tried not to put on anybody who was diseased, convicted of a crime involving moral turpitude, was a drunkard, a narcotic addict, or had been in the penitentiary (R. 61).

Judge Carter testified that one list of suggested names came from the head of the NAACP, and that poll lists, telephone directories, clubs, individuals and the City directories were used to get names (R. 61-62). He pointed out that there were six or seven Negroes on the venire for the instant trial (R. 63), and that he has seen colored men on juries trying white men in criminal cases (R. 63).

Honorable Walter B. Jones, for twenty years presiding Judge of the Fifteenth Judicial Circuit, testified that he had been a member of the Board of Jury Supervisors since its establishment (R. 65). He testified that there was no discrimination against Negroes and that there was no way of telling by looking at the card whether a man was white or colored (R. 66). He said that the court records were checked to determine the possibility of criminal records of prospects (R. 66), and that they were sometimes asked whether they could read or write (R. 66). Names are received from people calling in, writing, or visiting. The voting lists are also consulted and, of course, some of the jurors are known personally to the Supervisors (R. 67-68). The witness testified that he had not consulted social clubs, but had consulted civic clubs and had contacted a number of representative colored people for recommendations (R. 69); that whenever he saw

a Negro sitting on a jury, he tried to contact that Negro for more names (R. 69).

Judge Jones testified that the Supervisors had never refused or failed to put a person on the roll by reason of his color, race or creed (R. 72).

Judge Jones has been a Circuit Judge of the Fifteenth Judicial Circuit since 1920; his father was a Federal Judge and Governor of the State of Alabama, and Judge Jones, himself, was at the time of the trial President of the Alabama Bar Association (R. 71-72).

Honorable John R. Matthews, Clerk of the Circuit Court of Montgomery County, Alabama, is also a member of the Board of Jury Supervisors (R. 72). He keeps the records of the Board and helps select names.

He testified that he got names from individuals, poll lists, the City directory and the telephone directory, and that there was no discrimination against Negroes (R. 73). He had contacted Negroes for names and had also selected those known on the poll lists as Negroes. He had Negroes come to his office and go over the poll lists, but he had no idea of exactly how many names were in the jury box (R. 74). He testified that if he went through the jury roll, he could tell whether some were white or some were colored from personal knowledge, but could not distinguish all of the names (R. 75). There were Negroes on the jury panel the morning of the trial (R. 77).

Mr. Matthews testified that there was nothing on the jury roll to indicate whether a name was that of a colored man or white man (R. 76). He did not know of any venires where more than ten Negroes were

listed and he did not remember whether there were any Negroes on the grand jury which indicted Defendant (R. 78-79). He testified that the box was last refilled in January of 1955 (R. 80), after this case had been argued before the Supreme Court of the United States (R. 81).

He said that he had asked one J. E. Pierce, a colored man, for names and had received a list of between thirty and fifty, after requesting it two or three times (R. 82-83); that he has asked one D. Caffey, a Negro leader, for a list of names four or five times, but had never received one (R. 84); a Negro worker in the Judge of Probate's office brought a list, as did Morris Smith, a representative of an insurance company; one Orran Campbell, a barber, had been asked several times but had never given any names (R. 83).

He stated that there was no discrimination against Negroes and that the members of the Board had done the best job they could (R. 84-85). He further testified that the cards from the jury box contained only the man's name, address, occupation, place of business, and a number which corresponded with a number opposite the same name on the jury roll (R. 86).

Mr. Charles M. Pinkston, an attorney, testified that he had some criminal practice, but had not had much two years prior to the trial (R. 90). He remembered having Negroes on his own juries (R. 90).

Mr. G. A. Mosley, the former Sheriff of Montgomery County and presently Bailiff of the Court, testified that a good many grand juries had Negroes on them. In fact, there had been as many as four on one grand jury. He had seen Negroes sitting on juries

in criminal cases, and remembered one with five on the jury and several with three (R. 91-92).

Mr. Vaughan Hill Robison, an attorney, testified that he had tried cases before juries containing Negroes (R. 93). He also testified that as many as two or three served on cases which he had tried (R. 93). It was his testimony that the number of Negro jurors appearing for jury duty had increased during the past five years and that he saw no evidence of discrimination (R. 94).

Mr. Walter J. Knabe, an attorney, testified that he had very little criminal practice, but that it was usual for Negroes to be on civil juries, and it was his opinion that there were more Negroes on juries in Montgomery County than there were in the Federal Court in Montgomery (R. 96-97).

Mr. John Blue Hill, an attorney with criminal practice, testified that he had seen Negroes serving on the juries (R. 98), and that in one case where he defended a white man, there was a Negro on the jury. On another occasion, he defended another white man with a Negro on the jury (R. 98-99). He further testified that he knew of Negroes being on grand juries in Montgomery County (R. 99).

Mr. Mac Sim Butler, Sheriff of Montgomery County and former Court Bailiff, testified that on at least two occasions, he had seen as many as five Negroes serving on a jury and that many times, he had seen three (R. 102-103). He further testified that since becoming Bailiff in 1948, it was the usual thing to see Negroes on a petit jury (R. 103), and that Negroes were frequently found on the grand juries, the ratio

sometimes being three out of eighteen (R. 104). It was his testimony that the number had increased in the past seven years (R. 104).

The Defendant put several Negroes on the stand as witnesses. These witnesses testified that they had never been called for jury duty or that they had been called but once. It was shown that many of these witnesses were Pullman porters who were out of town a great deal. They also testified that they had never heard or seen Negroes on juries in Montgomery County. It was shown, however, that these witnesses had spent very little, if any, time around the Court House (R. 106 through 173).

Mr. William F. Thetford testified on behalf of the State. He detailed the way in which grand juries are selected and his testimony paralleled that of Judge Carter in that respect (R. 184-185). He also testified as to the manner of drawing petit juries. He stated that it was not unusual to have Negroes on the grand jury and that Negroes had served on over one-half of the grand juries of Montgomery County in the four years prior to Defendant's second trial. He testified that if a Negro was on the panel of fifty names drawn for grand jury service and if that Negro appeared and was not excused, his name was put in the hat, and if his name was drawn, he served on the grand jury. He had tried three cases the week prior to Defendant's trial and there had been two Negroes on each jury (R. 186-187). He testified that in his service as Circuit Solicitor, he had never seen a criminal panel without at least one Negro on it and that many times Negroes served on criminal juries (R. 187). It was his further testimony that the defendant usually strikes Negroes rather than the solicitor (R. 187). He testi-

fied that he knew of no agreements with defense attorneys that Negroes would be stricken and that, as a matter of fact, he had prosecuted even capital cases involving white defendants where Negroes were on the jury (R. 188) The witness was shown the jury list for the day and testified that he recognized some of the names as being those of Negroes ((R. 202).

The counsel for Defendant introduced the United States Census Reports, indicating that in 1950, out of 40,144 males in Montgomery County over the age of twenty-one, 25,021 were white and 15,123 were non-white (R. 199-200).

Testimony on the Merits

Mabel Ann Crowder, the prosecutrix, testified that on July 28, 1952, she was sitting in her bedroom when she looked in the mirror and saw the Defendant behind the door (R. 229). He was dressed in blue trousers and a shirt with gold or yellow design. She turned around and told him to get out (R. 230). She started screaming; the Defendant told her to shut up, and choked her to stop her from screaming (R. 230-231). Holding his hand over her throat, he pushed her across the foot of the bed and, while she was struggling and striking at him, he had intercourse with her. After telling her that if she told anyone she would be laughed at, he started hitting her (R. 231-232). According to the testimony of the witness, the Defendant held her by the hair and beat her head on the floor (R. 232). The witness testified that she did not remember his leaving and she came to with a small rug over her head. She then went to a neighbor's house (R. 233). She was taken to the Maxwell Air Force Base Hospital and next saw the Defendant

at the City Hall, where she identified him. She testified that he did not have a mustache at the time of the crime (R. 233-234). She positively identified him at the trial, stating that he was heavier and now had a mustache (R. 234). She further testified that during the beating, the Defendant told her that he ought to kill her (R. 234).

Mrs. Lois Struchko, a next door neighbor to Mrs. Crowder, testified that Mrs. Crowder came to her home about 12:45 P.M., on the day of the crime, crying and bleeding from her head. She complained of the rape to the witness. The witness put Mrs. Crowder on a sofa and gave her some ammonia in water (R. 240-241). She administered other first aid to the victim as well. The witness then took Mrs. Crowder to the Hospital after the police had given their permission (R. 241).

W. R. Clarke testified that on the day of the crime, between 12:30 and 1:00 P.M., he saw the Defendant at the corner of National and Cleveland Avenues, near the home of Mrs. Crowder. The Defendant was running toward Fairview Avenue and signaled for a ride (R. 243-244). The witness, who was stopped at the intersection, gave Defendant a ride. Defendant was drssed in blue pants, a flowered sport shirt and a straw hat. He rode as far as Cleveland and Fairview Avenues and said he was going to town. The witness positively identified the Defendant at the trial (R. 244). The witness testified that he reported the incident to the police the following morning, after he had read of the crime in the paper (R. 245). He later identified the Defendant at the jail, and Defendant did not have a mustache when seen by Clarke on the day of the crime (R. 246).

Colonel George Harold Kojac's testimony on the former trial was introduced, after proof that he was out of the jurisdiction of the Court. This testimony concerned the examination of Mrs. Crowder immediately following the crime (R. 307-313).

Cardis Nathaniel Johnson testified that he was the medical technician who performed certain tests on smears taken from Mrs. Crowder by Dr. Kojac, and that he found live sperm cells present (R. 314).

The Solicitor then introduced Major Virgil R. Zarling's testimony on the former trial, after proof that he was out of the jurisdiction of the Court. This testimony dealt with the physical examination of Mrs. Crowder (R. 319-324), and substantiated her description of injuries received at the time she was raped.

Clyde E. Jones, a City Detective, testified that he went to the Struchko home and saw Mrs. Crowder on the day of the crime. He testified that she described her assailant as a colored man wearing blue pants and a flowered shirt (R. 330).

Carnella Reeves, the Defendant's mother, testified that when she came home on November 10, 1952, she found that the police had been there and searched her home and had arrested her son, Jeremiah (R. 337). She testified that she was not allowed to see him at Kilby Prison until Thursday of that same week (R. 338). She testified that, although her son went part of the way through the eighth grade and had good grades (R. 340), he acted nervous and peculiar since he had had a lick on his head as a child (R. 340). She further testified that the Defendant never wore a hat and that, in her opinion, he was insane (R. 342).

The Defendant then offered a number of witnesses testifying to his church attendance, his peculiarities and his good reputation (R. 347-367). Some of these witnesses also testified that he always had a dark upper lip and never wore a hat (R. 365).

The father of the Defendant, Jeremiah Reeves, Sr., testified that on November 10, 1952, his son was arrested by the police and that when he came home, the police had been there. They came back later and he asked to see his son and was told he could not (R. 370). He further testified that he went to Kilby Prison and was not allowed to see him there until Friday of that week (R. 371). He testified that the Defendant had worn a mustache since he was fourteen years old (R. 371), and that he owned no hat and no blue shirt with yellow print (R. 371-372). According to the witness, the Defendant went to church regularly and sang in the choir (R. 372).

Defendant then offered other witnesses as to his good reputation and church activities (R. 376-384).

The testimony of Rebecca Mitchell, now deceased, was read into the record from the transcript of Defendant's former trial (R. 384). This testimony was to the effect that on the day of the crime, the Defendant was at her house from 11:00 A.M. until 4:00 in the afternoon, watching or playing a game of dominoes. She also testified as to his good reputation (R. 385-386).

The Defendant took the stand in his own behalf and testified that he was picked up on July 28, 1952, along with several others, and taken to the police station where he was later released (R. 393-394). He said

that he never saw Mrs. Crowder before the time he saw her at the City Hall in November of 1952 (R. 394). He denied the crime and denied that he had ever been in her home (R. 394-395). The Defendant testified that he played the drums in a dance band the night before the crime, slept late the next day and did not leave the immediate vicinity of his home (R. 395-396). He testified that on the day he was arrested in November, 1952, he was taken to the County Jail, where he stayed for five or six minutes before he was taken to Kilby Prison and put in the death cell. He testified that he was frightened and threatened, and that he stayed at Kilby Prison from Monday to Thursday before he saw his mother (R. 397-398); that he asked to see his mother and father and a lawyer, but these requests were refused (R. 398). He testified that on the way to Kilby Prison he was accused of committing several rapes (R. 412).

John Golthy testified that he had a dance orchestra which played on Sunday night, July 29, 1952, at the Sepia Club, and that the Defendant played the drums and sang with the orchestra from 9:00 until 1:00 o'clock on that night (R. 415-416). He testified that on the next day, he saw Defendant about 10:00 o'clock in the morning, and that Defendant told him he was going to school. He testified that Defendant always had a little something on his upper lip " . . . and this mustache now can be seen a little bit." (R. 416). He further testified to the good reputation of the Defendant (R. 417).

VII.

BRIEF AND ARGUMENT

1.

Ordinarily, an accused need not be re-arraigned after reversal of a cause unless the indictment is changed by amendment or otherwise.

Thomas vs. State, 225 Ala. 632, 53 So. 2d 340
Thomas vs. State, 190 P. 711 (Okla.)
Hamit vs. State, 275 P. 361 (Okla.)
Steen vs. State, 242 S. W. 1047 (Tex.)
State vs. Farrell, 28 S. E. 2d (N. S.) 560
State vs. Hewitt, 34 S. E. 2d 764 (S. C.)

The Defendant complains that he was deprived of his constitutional right to due process and equal protection by the trial court's refusal to hear his motion to quash the indictment and re-indict and re-arraign him, after his previous conviction had been reversed by the Uited States Supreme Court.

The record will show that Reeves was arrested on November 10, 1952, indicted November 14, arraigned November 15, and tried November 26; he was represented on arraignment and trial by counsel of his own choice, whose ability, industry and integrity has not been questioned in either appeal.

The first trial and conviction was affirmed by the Supreme Court of Alabama and was taken to the United States Supreme Court on writ of certiorari; this Honorable Court reversed, and although the question of systematic exclusion of Negroes from the jury was raised, the reversal was apparently based upon

the introduction of an illegal confession. See **Reeves vs. Alabama,** 348 U. S. 891, 99 L. Ed. 700, for memorandum decision. No change was made in the indictment, either by amendment or by any other means. In such a case, an accused need not be re-arraigned upon the second or subsequent trials of his case. In **Thomas vs. State,** 190 P. 711-17 (Okla.), a situation similar to the one at bar arose. The defendant in that case argued that he should have been re-arraigned on his second trial. The Criminal Court of Appeals of Oklahoma determined that a re-arraignment was not necessary, even though the record of the first trial did not conclusively show that he had been properly arraigned on that trial. In the instant case, the record affirmatively shows that the Defendant was arraigned and pleaded not guilty on his first trial (R. 2). The rule in most jurisdictions is that when a case has been reversed, it is not necessary that the defendant be again arraigned. Our courts in Alabama have placed a limitation upon this rule, but this limitation is not material under the facts presented here. In our jurisdiction, if the indictment is changed by amendment or by the fact that the earlier conviction acts as an acquittal of a higher degree of the offense, the better practice is to arraign the defendant prior to the second trial. See **Thomas vs. State,** 255 Ala. 632, 53 So. 2d 340. Here, of course, the indictment has not been changed in any manner.

We contend, therefore, that once the Defendant pleaded to the charge aganist him, the State was not required to re-indict or re-arraign him.

2.

Defendant was not deprived of his constitutional rights by the trial court's refusal to allow him to with-

draw a plea of not guilty entered on arraignment to permit him to attack the indictment on grounds of systematic exclusion of Negroes from the Grand Jury, or to inquire into the nature and extent of the evidence presented to the Grand Jury.

Title 15, Sections 278, 279, 286, Code of Alabama, 1940

Clark vs. State, 240 Ala. 65, 197 So. 23

Costello vs. United States, 305, U. S. 359, 100 L. Ed. 397

Clark vs. State, 239 Ala. 380, 195 So 260

Whitehead vs. State, 206 Ala. 288, 90 So. 351

Michel vs. Louisiana, 350 U. S. 91, 100 L. Ed. 83

Reese vs. Georgia, 350 U. S. 85, 100 L. Ed. 77

The Defendant alleges that his rights were violated by the trial court's refusal to let him withdraw his pleas of not guilty and not guilty by reason of insanity, so that he might attack the validity of the indictment on the grounds that it was based on an illegal confession and that Negroes were systematically excluded from the Grand Jury. In Title 15, Sections 278, 279 and 286, Code of Alabama, 1940, we find the provisions setting out the method of attaching an indictment.

Section 278, supra, provides that the proper method is by plea in abatement. Sections 279 and 286, supra, provide that in all cases, such a plea in abatement must be filed before the plea to the merits. The Defendant's motion was filed on his second trial, some two and a half years after his arraignment and plea to the merits (R. 5). The record on the first appeal, however, shows that Defendant's counsel filed a simi-

lar motion to quash the indictment on November 26, 1952 (R. of Jeremial Reeves, Jr., vs. State of Alabama, #120 October Term 7954, page 2). The motion to quash should have been filed on November 15; Defendant could have filed it then had he so desired; however, it was filed more than ten days after the Defendant was arraigned and entered his pleas of "not guilty" and "not quilty by reason of insanity"; it was overruled by the Court on the well-established practice in Alabama of requiring all pleas in abatement to be filed before pleading to the merits (**Whitehead vs. State,** 206 Ala. 288, 90 So. 351). The requirement is reasonable and tends to promote an orderly system of properly and fairly disposing of criminal proceedings. The record on the first appeal further shows that Defendant was served with a copy of the indictment and venire on November 17, 1952 (R. - first appeal, page 13) according to order of the court made on the day of arraignment, November 15, 1952 (R. - first appeal, page 2). This is the procedure prescribed by Title 30, Section 63, Code of Alabama, 1940, which requires the special venire to be drawn in the presence of the Defendant when he is arraigned and a copy of this venire and of the indictment to be served upon him at least one full day before trial. Defendant's counsel had from November 15, the date of arraignment, until November 26, the date of trial to ask to withdraw the pleas to the merits and to be allowed to file pleas in abatement. In the discretion of the Court this could have been done; however, after ten days the Court apparently saw no justification in the motion to quash and certainly on the second trial two and a half years later there is no justification for allowing the motion.

The Supreme Court of Alabama correctly points out that the indictment shows a list of witnesses who apparently testified before the Grand Jury, including the prosecutrix (R. 448); and the Solicitor testified that he presented evidence to the Grand Jury (R. 192). (See also statement of Solicitor, R. 207). Where an investigation was made by the Grand Jury, the sufficiency of the evidence adduced cannot be raised by a motion to quash the indictment, even if filed at the proper time, which was not done in this case. See **Clark vs. State,** 240 Ala. 65, 197 So. 23, and **Costello vs. United States,** 305 U. S. 359, 100 L. Ed. 397.

In **Clark vs. State,** 239 Ala. 350, 195 So. 260, the above statutes were approved by the Supreme Court of Alabama and certiorari was denied by this Court. See **Clark vs. Alabama,** 311 U. S. 688, 85 L. Ed. 445.

This Honorable Court has recently had occasion to deal with a similar problem. In **Michel vs. Louisiana,** 350 U. S. 91, 100 L. Ed. 84, the defendant was indicted on February 19, 1953, and was presented to the court for arraignment on February 23, 1953. The arraignment was continued in order that counsel might be secured. In Louisiana the defendant is required to object to the grand jury before three judicial days after its term, and in any case, before arraignment. The opinion holds that such limitation was not a denial of due process, remarking that a motion to quash is normally a short, simple document, easily prepared in a single afternoon. It then appeared that the term of the grand jury which indicted that defendant expired March 2, 1953. The motion to quash the indictment was filed on March 9, five judicial days after the expiration of the term of the grand jury. Counsel

for that defendant contended that he had not been formally appointed until March 5. The Supreme Court of Louisiana had held that he had been appointed on March 2, and this Court refused to overturn the findings of the Louisiana Court. It will be noted in Michel that the ground for challenge of the indictment was the systematic exclusion of Negroes from the grand jury. The State courts found that the question had been waived by the failure to file the motion to quash at the proper time. This court affirmed that finding.

Under Alabama practice a comparable situation is found in requiring the indictment and copy of the venire to be served on a defendant at least on full day before the trial (Title 30, Section 63, Code of Alabama, 1940). A careful search of our cases fails to reveal that any defendnt has ever successfully contended that one day's notice of the indictment and venire was a denial of due process.

We submit, therefore, that under Alabama statutes and practice, the Circuit Court of Montgomery County, Alabama, properly refused to permit the withdrawal of the pleas so that the motion might be filed.

3.

The lack of proportional representation of Negroes on the jury does not constitute discrimination under the facts presented.

Title 30, Sections 20, 21, 24, Code of Alabama, 1940

Brown vs. Allen, 344 U. S. 443, 97 L. Ed. 469
Akins vs. Texas, 325 U. S. 398, 89 L. Ed. 1692
Kennedy vs. State, 213 S. W. 2d 132 (Tenn.), cert. den. 333 U. S. 846, 92 L. Ed. 1129
People vs. Price, 20 N. E. 2d 61 (Ill.),

cert. den. 308 U. S. 551, 84 L. Ed. 463
Thomas vs. Texas, 212 U. S. 278, 53 L. Ed. 512

The Defendant filed a motion to quash the venire on the ground that Negroes were systematically excluded from the jury rolls of Montgomery County. Testimony was heard on this motion. The testimony is set out at length in the record, of course, and is summarized for the convenience of this Court in our Statement of Facts.

The courts of Alabama and the Supreme Court of the United States have held that the lack of proportional representation alone does not constitute discrimination. In **Brown vs. Allen,** 344 U. S. 443, 97 L. Ed. 469, defendant contended that discrimination was proved by evidence that 30% of those eligible as jurors were Negroes, while only 7% of the names in the jury box were names of Negroes. The majority of this court held that no discrimination against Negroes in the selection of the jury had been shown.

In **Thomas vs. Texas,** 212 U. S. 278, 53 L. Ed. 512, the Court, in finding no evidence of discrimination, remarked that the evidence showed that those responsible for obtaining jurors had fairly and honestly attempted to carry out their duties. We submit that such is the case here, as shown by the testimony of the various members of the Board of Jury Supervisors of Montgomery County.

The case of **Cassell vs. Texas,** 339 U. S. 282, 94 L. Ed. 839, cited by Defendant, is no basis for reversal of the case at bar. In that case the majority opinion held that the statement of the jury commissioners—that they chose only whom they knew and that they knew no eligible Negroes in the area—proved discrimination.

There is no testimony of such statements here. Although the record indicated that the Board's acquaintance among Negroes was not so extensive as among whites, the testimony shows conclusively that personal acquaintance was not the basis of selection. The record shows that every effort was made to obtain names of Negroes for the jury box and that no man had ever been turned down because of his race. It will be noted that all of the officers of the court and some of the attorneys of the Montgomery Bar testified that they were accustomed in recent years to seeing Negroes serving on grand and petit juries in Montgomery County—even more than were found on the venires of our Federal Courts. The record also indicates that a number of Negroes were on the venire selected for this Defendant's trial. The testimony shows that there is no method of determining from the cards in the jury box whether a man is white or colored.

A further finding in **Cassell vs. Texas,** supra, was that no more than one Negro was ever on a panel at one time. (See the concurring opinion of Mr. Justice Frankfurter.) This evidenced a design to limit the number of Negroes serving. In the case at bar, varying numbers were shown to have served from time to time with some occasions where no Negroes served. We submit that there was no evidence of a scheme or plan to pay token tribute only to the requirements laid down by the Supreme Court of the United States.

It will be noted that although the court officials and attorneys testified that many Negroes served on juries in Montgomery County, Alabama, the witnesses presented by the Defendant testified that they had seldom, if ever, heard of or seen a Negro on a Mont-

gomery County jury. We deem it sufficient to point out that cross-examination reveals that these witnesses seldom, if ever, had occasion to witness a criminal proceeding, and for the most part, were out of town a great amount of the time. Thus, they had no opportunity to know whether, in fact, Negroes did serve on these juries. It is also interesting that their apparent feeling is that Negroes should be tried by Negroes, in light of the Solicitor's testimony that Negro jurors were usually struck by Negro defendants.

We contend that the evidence shows that the trial court properly ruled on the motion to quash the venire.

4.

Matter made subject of timely and reasonable inquiry by court or counsel during examination of prospective jurors does not necessarily have to constitute ground for challenge for cause and the latitude allowed is within the sound discretion of the trial court.

Title 30, Sections 63, 64, Code of Alabama, 1940

Rose vs. Magro, 220 Ala. 120, 124 So. 296

Redus vs. State, 243 Ala. 320, 9 So. 2d 914, cert. den. 318 U. S. 774, 87 L. Ed. 1143; rehearing den. 318 U. S. 802, 87 L. Ed. 1166

Burgess vs. Singer Mfg. Co., 30 S. W. 1110 .

The Defendant complains that the remarks of the Solicitor, in asking the Court to present certain questions to the jury (R. 210-211), were prejudicial to his rights. The Solicitor asked that the Court ask the venire whether any were members of the NAACP.

He also stated that it was his information that the case was being financed by that group.[1] It is not nec-

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1. The record, pages 214-215, show the following typical examination of the jurors by the Court:

THE CLERK: Elbert R. Hughes; A. Knox Jackson; Leonard H. Jacobs; Alex P. Long; James E. Lott.

THE COURT: We are about to try the case of the State of Alabama versus Jeremiah Reeves, Junior, charged with the capital offense of rape.

Are each of you citizens of Alabama, and have you been citizens for the past year?

Are each of you resident householders and property holders in this County?

Have any of you a fixed opinion as to the guilt or innocence of this defendant that would in any way bias your verdict?

Have you any fixed opinion against capital punishment or penitentiary punishment?

A. KNOX JACKSON: I am against capital punishment.

THE COURT: You are excused.

Are you willing to convict on circumstantial evidence if the evidence convinces you beyond a reasonable doubt?

Are any of you members of the National Association for the Advancement of Colored People?

JAMES E. LOTT: I am a member.

THE COURT: If it is a fact that funds for this defendant's defense are being paid for by the National Association for the Advancement of Colored People, would that fact, if it is a fact, have a tendency at all to bias or prejudice your verdict, or bias or prejudice you against this defendant in any way?

JAMES E. LOTT: No, Sir.

THE COURT: Have any of you at any time or place participated in any Grand Jury or Petit Jury in connection with this case previously?

These four are qualified.

(The four jurors stated their names and occupations.)

essary that the questions asked the jury venire bring forth answers which provide a ground for challenge for cause. It is proper to have questions which might bring out matters which would enable the party to select an unbiased and unprejudiced jury. It goes without question that attorneys may wish to omit certain persons from the jury, even though they might not be able to challenge the jurors for cause. To give counsel the opportunity for intelligent selection of the final twelve men, wide latitude is allowed in the questions asked on voir dire.

The Code of Alabama provides that in all civil and criminal cases, either party shall have the right to examine jurors as to their qualifications, interest, or bias that would affect the trial of the case, and shall have the right, under the direction of the Court, to examine said jurors as to any matter that might tend to affect their verdict. (Title 30, Sec. 52, Code of Alabama 1940).

The Solicitor asked merely that the jurors be qualified as to membership in the NAACP (R. 210). Upon objection by Defendant the Solicitor then stated his reason—that he understood the defense was being financed by the NAACP. We submit the Solicitor was justified, since the name of the General Counsel of the NAACP appears on the brief filed in the first appeal. The record shows that three jurors admitted membership in the NAACP when they were being qualified (R. 213, 215) and that such information was legitimately obtained and was useful to the State in determining whom to strike from the venire.

In **Rose vs. Magro,** 220 Ala. 120, 124 So. 296, the Supreme Court of Alabama has held that the subject of inquiry need not be grounds for challenge for cause

and that in the discretion of the Court parties have the right to ask such questions as will enable them intelligently to select acceptable jurors. The opinion approves inquiry as to whether or not a juror is employed by the City, or is a Mason or a Methodist, a member of a union—all, even though such membership would in no way disqualify the juror. The general principles set out in this case are cited with approval in **Redus vs. State,** 243 Ala. 320, 9 So. 2d 914, in which certiorari was denied by this Honorable Court (**Redus vs. State,** 318 U. S. 802, 87 L. Ed. 1166).

The Court's attention is also directed to **Burgess vs. Singer Mfg. Co.,** 30 S. W. 1110, where the Court permitted questions regarding whether or not prospective jurors were members of the Knights of Pythias or the International Order of Odd Fellows.

5.

Defendant was not deprived of due process of law by the action of the trial court in excluding the general public from the trial proceedings.

Section 169, Constitution of Alabama, 1901

Title 15, Section 320, Code of Alabama, 1940

Scott vs. State, 249 Ala. 304, 30 So. 2d 689
Keddington vs. State, 19 Ariz. 457, 172 P. 273
Robertson vs. State, 64 Fla. 437, 60 So. 118
Reagan vs. United States, 202 Fed. 488
Melanson vs. O'Brien, 191 Fed. 2d 963
Sawyer vs. Duffy, 60 Fed. Sup. 852
Benedict vs. People, 23 Colo. 126, 46 P. 637

Commonwealth vs. Blondin, 324 Mass. 564, 87 N. E. 2d 455

Moore vs. State, 151 Ga. 648, 108 S. E. 47

People vs. Swofford, 65 Cal. 223, 3 P. 809

Sallie, et al, vs. State, 155 Miss. 547, 124 So. 650

Baker vs. Utrecht, 161 Fed. 2d 304

State vs. Callahan, 100 Minn. 63, 110 N. W. 342

Cooley on Constitutional Limitations (8th Ed.), p. 647

Wigmore on Evidence (3rd Ed.), Sec. 1835

When this case finally reached the stage for taking testimony on the merits, the Court excluded the general public from the trial (R. 223-224). The Court permitted the following persons to remain: Defendant, counsel representing the parties, the court officers, the attorneys, members of the press, radio, television or other news gathering services, uniformed officers, members of the bar, Defendant's pastor, members of the family and relatives of the Defendant.

We contend that there was no error in this ruling. Our Constitution provides that the court may, in its discretion, exclude from the courtroom all persons not necessary in the conduct of the trial, in cases of this sort (Section 169, Constitution of Alabama, 1901). The Legislature has also provided for this same exercise of discretion (Title 15, Section 320, Code of Alabama, 1940). The trial court's action in excluding all but the above-listed persons was clearly not error. Similar actions have been upheld in many courts throughout our Country. This Court's attention is particularly invited to the following cases:

Reagan vs. United States, 202 Fed. 488, 44 L. R.

A. (N. S.) 583, (9th Cir. 1913) (Conviction in District Court of Alaska for rape, courtroom cleared of all except court officials, witnesses, and members of the bar—Affirmed); **Melansen vs. O'Brien,** 191 Fed. 2d 963, (1st Cir. 1951) (Order denying petition for writ of habeas corpus vacated on other grounds); **Sawyer vs. Duffy,** 60 Fed. Sup. 852 (D. C. Cal. 1945) (Conviction in California court of exciting lust of child under fourteen. Court cleared of spectators—Affirmed); **Benedict vs. People,** 23 Colo. 126, 46 P. 637 (1896) (Conviction in Colorado court of infamous crime against nature. Court cleared of all except court officials, members of bar, law students, witnesses, and defendant's family—Affirmed); **Commonwealth vs. Blondin,** 324 Mass. 564, 87 N. E. 2d 455 (1949) (Conviction in Massachusetts court for rape. Court cleared of all except court officials, members of bar, witnesses, stenographers and members of press—Affirmed); **Keddington vs. State,** 19 Ariz. 457, 172 P. 273, (Conviction in Arizona court of causing the dependency of a girl. Court cleared of all except court officials, members of bar, witnesses, family of accused, and members of press—Affirmed); **Moore vs. State,** 151 Ga. 648, 108 S. E. 47 (1921) (Conviction in Georgia court of rape. Court cleared of all except court officials, members of the bar, family of accused, members of press—Affirmed); **People vs. Swofford,** 65 Cal. 223, 3 P. 809 (1884) (Conviction in California court of abducting a girl under age for prostitution. Court cleared of all except court officials and persons connected with the case—Affirmed); **Robertson vs. State,** 64 Fla. 437, 60 So. 118 (1912) (Conviction in Florida court of manslaughter in causing the death of a young woman by causing her to miscarry or abort an unborn child. Court cleared of all except court officials, members of the bar, wit-

nesses, family of accused—Affirmed); **Sallie, et al. vs. State,** 155 Miss. 547, 124 So. 650 (1929) (Conviction in Mississippi court for attempt to rape. Court cleared of all spectators—Affirmed).

Certainly, an accused is protected from oppression and arbitrary action so long as trained and discriminating newspaper reporters are present, along with his family, his pastor, and members of the bar. See **Keddington vs. State,** 19 Ariz. 457, 172 P. 273.

VIII.

CONCLUSION

Respondent has met the objections raised by Petitioner.

The reversal of Petitioner's prior conviction does not require that he be re-indicted or re-arraigned; neither the composition of the Grand Jury which returned the indictment nor the evidence which it heard can be inquired into by motion to quash or plea in abatements entered more than two years after pleading to the merits.

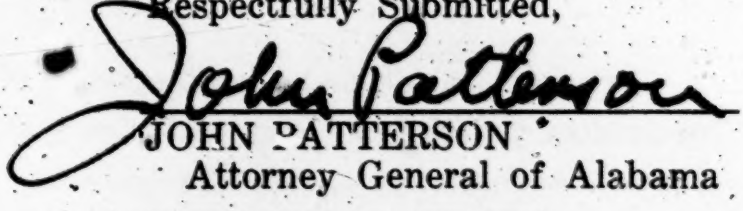
There has been no proof of systematic exclusion of Negroes from the Grand or Petit Juries in Montgomery County, Alabama; on the contrary, the evidence conclusively shows that the jury box was filled and the venires drawn without regard to race or color.

The Petitioner was afforded a public trial as required by the Constitution of Alabama and of the United States.

Due process of law has been afforded the Petitioner at every stage of his trial; due regard for the

laws and judicial procedures of Alabama require that the judgment below should be affirmed.

Respectfully Submitted,



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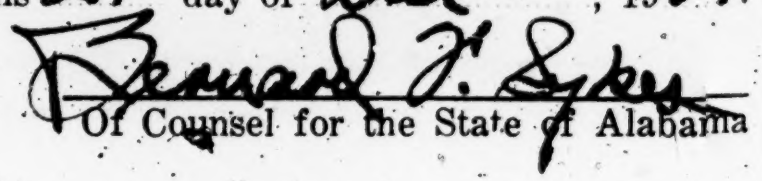
IX.

CERTIFICATE

This is to certify that I have this day served a copy of the foregoing brief and argument upon Honorable Peter A. Hall, one of the attorneys for Petitioner, by placing a copy in the United States mail, postage prepaid, properly addressed to him at 1630 Fourth Avenue, North, Birmingham, Alabama.

On this 21 day of Dec, 1957.



Of Counsel for the State of Alabama